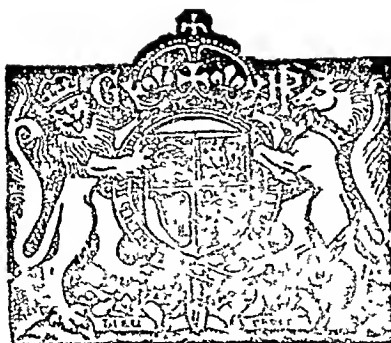




**UNREVISED**



**SECRETARY OF STATE'S EVIDENCE**

**before the**

**JOINT COMMITTEE**

**on**

**INDIAN CONSTITUTIONAL REFORM**

**PART II**

**(3rd October to 7th November 1933)**

SIMLA  
GOVERNMENT OF INDIA PRESS  
1933



# RAJASTHAN UNIVERSITY LIBRARY

Present:

Lord Archbishop of Canterbury.  
 Lord Chancellor.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Linlithgow.  
 Marquess of Reading.  
 Earl of Derby.  
 Earl of Lytton.  
 Lord Middleton.  
 Lord Hardinge of Penshurst.  
 Lord Snell.  
 Lord Rankellour.  
 Lord Hutchison of Montrose.

Mr. Butler.  
 Major Cadogan.  
 Sir Austen Chamberlain.  
 Mr. Cocks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Isaac Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Lord Eustace Percy.  
 Miss Pickford.  
 Sir John Wardlaw-Milne.  
 Earl Winterton.

The following Indian Delegates were also present:—

## INDIAN STATES REPRESENTATIVES.

Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lt.-Col. Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.

Mr. N. M. Joshi.  
 Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon'ble Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows:

*Chairman.*] My Lords and gentlemen, some of our friends of the Delegation have been far afield since we parted two months ago, although it only seems two days, and I feel quite certain that you would wish me to welcome them again to our counsels.

The proposal for to-day, subject to the approval of the Committee, is that the Secretary of State should give evidence on the Services, and I propose to follow the arrangement which we pursued on previous occasions of this kind, and to ask Lord Salisbury to commence the examination, and thereafter to invite Members of the Committee to examine

the Secretary of State, and, after that, Members of the Delegation.

Marquess of Salisbury.

11,210. The paragraphs with which we are dealing (the Chairman will correct me if I am wrong) are 176 to 201 and 119 to 121, the later paragraphs being taken first?—(Sir Samuel Hoare.) Yes. Paragraphs 119 to 121 are a different subject, are they not?

11,211. They are, but in the programme they are all printed together. However, you would rather I took them quite separately?—Yes, certainly. I



was assuming that we were going to discuss the question of Service rights.

11,212. Very well. I do not propose to ask a very great many questions, for the reason that a good deal of it has already been dealt with in our discussions, and probably the Secretary of State would not wish us to go all over it again, as, for example, paragraph 182, which deals with things like accruing rights, and so on. That has all been thoroughly discussed. Of course it is for the Committee to say whatever they like, but personally I have no questions to put upon that paragraph, and others. Paragraph 176 involves, does it not, the disappearance of the Secretary of State's Council?—It involves the disappearance of the Secretary of State's Council in its present corporate form.

11,213. Yes, but it is to be replaced by advisers?—Yes.

11,214. The advisers have no function except advice with one limitation, that in respect of appeals by the Civil Service, as I understand, and rules of the conditions of service, the Secretary of State will have to get the consent of the advisers for those?—Yes, that is so.

11,215. They have, as it were, absolute authority in the rules regulating the conditions of service, and with respect to appeals, but in all the rest they have nothing to do but to advise. I do not want to underrate advice for a moment. I only want to get it clear?—Yes.

11,216. The disappearance of the Secretary of State's Council does involve a change because (I speak with great diffidence) I understand the present Council of the Secretary of State have certain definite powers which will disappear?—The two main powers are with reference to the revenues of India. The power that they possess is a safeguard against the Secretary of State, or the British Parliament, exploiting the revenues of India. That is the first safeguard that they possess. The second safeguard is the safeguard to which you have already drawn attention, namely, in connection with Service rights.

11,217. But the Service rights power is to be continued in another form?—Yes.

11,218. But what does disappear is the control over finance?—Yes, as an in-

herent consequence of the changes that are being proposed under which the Federal Government and the Provincial Government would be responsible for their own finance within the terms of the White Paper.

11,219. I quite understand. One would naturally expect that that would happen. But the Secretary of State will agree that that does remove one safeguard about finance which at present exists?—It removes a safeguard in the interests of India; not a safeguard in the interests of the United Kingdom.

11,220. Certainly; but the Secretary of State would agree that that makes it all the more necessary that the other safeguards of finance should be carefully drawn?—I do not want to dispute what Lord Salisbury is saying, but I really do not quite see the connection between the two.

11,221. That is probably because I have put my question ignorantly. The Secretary of State said that the Council had authority over the revenues of India. But have they no authority over the expenditure in India?—Yes.

11,222. They have?—Yes.

Sir Austen Chamberlain.] May we get clear exactly what their authority is? Marquess of Salisbury.] Please.

Sir Austen Chamberlain.

11,223. I was under the impression—I may be wholly wrong—that their control was a control over expenditure, but not over the raising of revenue—that no money can be spent from Indian revenues without the approval of the Council of India?—Substantially that is so.

11,224. But that the control of raising of revenue is not necessarily a function of the Council of India?—That is so; and the appropriate clause in the Government of India Act is Clause 21 setting out those conditions.

Marquess of Salisbury.

11,225. Quite so. So that now we are going to get rid of the control over expenditure, so far as the Secretary of State's Council is concerned, it makes it all the more necessary that the other safeguards against undue expenditure in the White Paper should be carefully drawn because they are the only things

the people of India would have to rely upon?—Yes, I think that is so.

11,226. I do not want to press that any more. I take the Secretary of State to paragraph 183 of the White Paper, if I may, which prescribes that the appointments to the Indian Civil Service, the Indian Police, and the Ecclesiastical Department should be subject to the authority of the Secretary of State?—Yes.

11,227. I do not know whether the Secretary of State could, quite shortly, tell us what grades of the Police that would include?—I will ask Sir Malcolm Hailey to deal with a detailed question of that kind, if I may.

11,228. Please?—(Sir Malcolm Hailey.) It will deal with the grades going down to Superintendent of Police and Assistant Superintendent of Police who are all Members of the All-India Service.

Marquess of Reading.

11,229. Right down to Superintendents and Assistant Superintendents?—Superintendents and Assistant Superintendents of Police.

Marquess of Salisbury.

11,230. They will all be, as it were, protected (I do not want to use an invidious term) from any undue interference by the responsible Minister?—The ultimate disciplinary authority will be the Secretary of State.

11,231. Have you observed the difference of treatment under paragraph 186, of the Police, and under paragraph 190, which deals with other persons—"of all persons in the Federal and Provincial Services other than persons appointed by the Crown, by the Secretary of State in Council, or by the Secretary of State." Paragraph 190 I understand would include the District Magistrates?—No, Sir.

11,232. Are the District Magistrates to be appointed by the Secretary of State?—The District Magistrates, if we continue the present arrangements of the Government of India Act, will be scheduled posts which must be filled from an All-India Service under the control of the Secretary of State.

11,233. So that that is protected and all their conditions of service are protected?—Yes.

REPRO

Lord Eustace Percy.

11,234. If I may be permitted to clear that up, are not District Magistracies now sometimes filled by Provincial Service personnel?—We have men promoted from the Provincial Service into listed posts, in which case they come under the control of the Secretary of State. There are a number of acting appointments and officiating appointments held by Provincial Service officers, but the posts of District Magistrate as such are scheduled and it is only for short periods that they can be filled without the sanction of the Secretary of State by members of a Service not under the control of the Secretary of State.

Marquess of Zetland.

11,235. On that point, might I just ask Sir Malcolm Hailey: Are not there a number of listed posts which are to be filled by Provincial Service officers—posts of District Magistrate, I mean; and in those cases they do not come under the control of the Secretary of State so far as their conditions of service are concerned, do they?—Our cadres contain provision for all District Magistrates posts on the cadre of the Indian Civil Service or listed posts which come under the control of the Secretary of State. There are cases, however, when there are not sufficient men on the cadre to fill the District Magistrates posts and they are filled in an officiating or temporary capacity by Provincial Service officers. To that extent they do not come under the Secretary of State.

Sir John Wardlaw-Milne.

11,236. Does that mean that when they become permanent appointments, they automatically come under the Secretary of State,—When they fill a listed post they become part of the Indian Civil Service cadre.

11,237. Whatever the origin of their service?—Whatever the origin of their service.

11,238. Is it the intention of the White Paper that that system should still continue, but that the control of the Secretary of State would depend upon the nature of the post and not upon the sort of appointment of a person to fill that

post?—(Sir Samuel Hoare.) It is both in the White Paper.

11,239. It will still be both under the White Paper?—Yes.

Marquess of Reading.

11,240. It is necessary, is it not, to be able to make appointments of that kind from the Provincial Services in case there is any sudden demand. You would not have sufficient officers, perhaps, at hand to fill them from the Indian Civil Service or the scheduled list. You must take the men from the Provincial Service for the time being?—(Sir Malcolm Hailey.) That is so.

11,241. That is the reason why you do get a number of Magistrates appointed. There may be cases in which there may be an extra demand?—Yes.

11,242. In the same way an officiating Magistrate is appointed. He does not fall under the Secretary of State in the listed or scheduled posts unless from that at any time he becomes a permanent District Magistrate. That is the position?—That is the position. (Sir Samuel Hoare.) The cases are covered by Clause 188 on page 83 of the White Paper. (Sir Malcolm Hailey.) That provides that, although not a Member of the Indian Civil Service, if you have held what is known as an Indian Civil Service post you may be given these rights by the Secretary of State.

Marquess of Salisbury.

11,243. That gives the power to the Secretary of State to assimilate the position of these temporary gentlemen as if they were permanent people?—(Sir Samuel Hoare.) Yes.

Lieut.-Colonel Sir H. Gidney.

11,244. Do you mean that if a Deputy Collector is appointed to the superior grade and is made permanent in that appointment, he comes under the control of the Secretary of State?—(Sir Malcolm Hailey.) He comes permanently under the control of the Secretary of State if he is permanently admitted to a listed post.

11,245. Even although he comes from the Provincial Service?—He is only appointed to a listed post with the sanction of the Secretary of State.

Sir John Wardlaw-Milne.

11,246. Is not that paragraph 188 optional and not obligatory?—Optional.

Sir John Wardlaw-Milne.] It is not necessary that he should come under that clause. It is an option.

Marquess of Salisbury.] May I just refer to a note in the White Paper, on paragraph 183, at the bottom of page 82—I do not quite understand it. Up to now, as I understand it—

Marquess of Reading.] Will you tell us which of the notes you are referring to?

Marquess of Salisbury.

11,247. It is the lower note, beginning: "Under existing conditions the personnel required for External Affairs and for conducting relations with the States belong to a common department—the Indian Foreign and Political Department." That is to be changed, as I understand by that note and after the commencement of the Constitution Act, the latter, that is the Political Department belonging to the States, will be under the Viceroy. On the other hand, the personnel of the Department of External Affairs, that is, Foreign Affairs, will be under the Governor-General, who will himself direct and control that Department. Now I do not quite understand why foreign affairs and personnel are under the Governor-General, and State affairs and personnel are under the Viceroy. Of course, they are the same person, but it has a different result?—(Sir Samuel Hoare.) The reason, Lord Salisbury, is that political affairs, namely, the relations with the States, are outside the Federation altogether.

11,248. They belong to paramountcy?—They belong to paramountcy.

11,249. But external affairs are reserved?—They are reserved. I think Lord Salisbury will see that this is a Constitutional difference rather than a difference of substance. External affairs are a Federal subject that is reserved, whereas political affairs are not a Federal subject at all.

11,250. I imagine it is only a question of drafting really, but that the Secretary of State will realise that as the words are drafted now, the Governor-

General would have to act in these respects by the advice of his Ministers?—No; because it is a reserved subject.

11,251. As long as that is quite clear, it is merely the difference of the dual personality of the Governor-General?—And a difference of constitutional drafting. It is nothing more than that. In both cases the Governor-General or the Viceroy will be acting at his discretion.

11,252. Now, I have only one other paragraph to call attention to on this part, and that is paragraph 186. The Secretary of State has, of course, noticed that there has been some discussion as to the ultimate security for the pension rights of the Civil Service?—Yes.

11,253. I think perhaps it would be an advantage if he would clear that up here in the Committee. The Pension Fund of the Services is at present a matter absolutely secured by the Secretary of State himself, and by the full credit of the British Government?—No; it is secured upon the revenues of India.

11,254. But it is in point of fact secured at present by British guarantee?—No; there is no British guarantee.

11,255. At any rate, as a matter of practice, as things stand at present it is not suggested that there ever could be any failure to meet the claims upon the Fund, short of the bankruptcy of the British Treasury?—There is no Fund. It is a part of the general revenues of India. I quite agree with Lord Salisbury in no contingency that one could contemplate would there be a repudiation of that obligation, but the obligation is secured solely and only upon the revenues of India.

*Lord Hardinge of Penshurst.*

11,256. When you say repudiation do you mean repudiation by the Government of India or by the Government at home?—I mean by anyone.

11,257. That is very important. Supposing there was a deficit in India and that they could not pay the pensions from the revenues, who would pay them then?—We have never contemplated the possibility of a contingency of that kind, but there is no guarantee of the British Treasury; there never has been.

*Lord Hardinge of Penshurst.*] It might arise.

*Marquess of Salisbury.*

11,258. The Secretary of State will see the distinction. At present, certain sums of money are paid by the Civil Servants every year into the Pension Fund. There may be no actual Fund but there is what is absolutely equivalent to a Fund, the complete credit of the British Government behind it, because it is unthinkable that the money should be paid in and the British Government should say, "We have nothing whatever to do with it. That all depends upon the revenues of India"?—That is exactly the position the British Government has always maintained.

11,259. Is that the Secretary of State's considered answer, that there is no greater security in the present system than what is involved in the revenues of India?—Technically, that is so.

*Lord Rankeillour.*

11,260. But the fact that the expenditure of India can be controlled from home does afford an indirect security, does it not?—And we have always stated—indeed, my predecessor stated in the House of Commons two or three years ago—that His Majesty's Government will not allow a situation to arise in which India could repudiate.

*Marquess of Salisbury.*

11,261. Two or three years ago he said that?—Yes; I have repeated it.

11,262. Would you repeat it after the White Paper passed into law?—Yes; certainly.

11,263. Of course, I think if that was the absolutely settled commitment of the British Government it would make a great deal of difference?—We have made the statement time after time; I have myself repeated it comparatively recently in the House of Commons and I re-stated it in answers to correspondence. There is no secrecy or hesitation about it.

*Archbishop of Canterbury.*

11,264. May I ask is the Secretary of State referring to Lord Peel's Despatch of April, 1923?—No; I am referring specifically to Mr. Benn's answer to a question in the House of Commons so far as I remember during the discussions

of the First Round Table Conference, or about that time, and since accepted and repeated by me on behalf of the present Government.

*Marquess of Reading.*

11,265. May I ask a question? Does it not really amount to this, that from the answers which have been given and the general discussion some very indefinite moral obligation is said to rest upon the British Government? The British Government has made the statements through you and I think your predecessor, but there has never yet been any definite obligation of guarantee undertaken by the British Government. It has never become a charge upon British Finances, contingent or otherwise, up to the present. That is the position, is it not?—That is so.

11,266. Although it is expected that if the circumstances ever did arise and without binding the Government, it would be necessary for the British Government to intervene. I think that is the position, is it not?—I would prefer to restrict myself specifically to the statement that I made upon the subject and which I can circulate to the Members of the Committee.

*Marquess of Salisbury.*

11,267. The Secretary of State does not think that in face of the Constitutional change it would be necessary to supplement the former guarantees by something specific in the Act?—No, I think definitely that it is not necessary. The whole of the White Paper Scheme is founded upon the conception that these obligations will be met, and supposing we had governments in India who were not willing to meet obligations of this kind, we think we have taken powers in the White Paper to ensure that these obligations will still be met. Further than that, I would point out, Lord Salisbury, that it is impossible, so it seems to me, to draw a distinction between one kind of obligation and another kind of obligation. We believe that these obligations are going to be met. In actual practice the obligation for the payment of the Services is a comparatively small obligation when you compare it with the much greater obligations of the service of the debt and the expense for defence.

11,268. May I interrupt the Secretary of State to ask what he means by "small"—does he mean small in amount?—Small in amount.

11,269. It does not mean small in obligation?—No; not a bit; I am much obliged to Lord Salisbury for making that intervention. I regard all these obligations as equally sacred. When it comes to questions of amount—and after all one has to take into account the question of amount—when one considers the likelihood of the obligations being met or repudiated, the obligation for the pensions is a comparatively small one. The much bigger obligations are the obligations for Defence and the service of the debt. We feel that we have made proposals under the White Paper that will ensure all those obligations being met, both the greater obligations for the service of the debt and for Defence, and still more the obligations for the service of the pensions.

*Sir Austen Chamberlain.*

11,270. Secretary of State, may we for a moment exclude Defence and confine ourselves to these pensions and the debt, which seem to me more analogous to one another than is the Defence service. The position in regard to the debt and to the pensions at present, I understand, is that they are a charge upon Indian revenues?—Yes.

11,271. And they have no guarantee by the British Government except the statement of British Ministers of what is an obvious truth, that the British Government would not allow the Indian Government to default on those obligations?—Yes.

11,272. After the Reforms, these will still remain in the same position?—Yes.

11,273. A charge upon Indian revenues?—Yes.

11,274. But, as I understand, from your earlier answer, your predecessor and yourself have stated that it would still be impossible for the British Government to allow a default on either?—Yes.

11,275. I am right, am I not?—Yes.

11,276. And you say that within the White Paper you have taken powers sufficient to enable you to prevent such a

default if the emergency should arise ?  
—Yes.

11,277. Can you give me a reference to the particular powers ?—Yes. First of all, short of a breakdown of the Constitution, the fact that those charges are a first charge upon the revenue and they are not votable.

*Marquess of Salisbury.*

11,278. Are they a first charge before the service of the loans ?—No. I am not distinguishing between one of these obligations and another. The Funds for the Reserved Services are not votable and they are a charge that has got to be met from the revenues. If Sir Austen wants special reference to those powers he will find it in paragraph 18 (b).

*Sir Austen Chamberlain.*

11,279. That is what I understood the Secretary of State to refer to but I wanted to get the matter perfectly clear ? —Yes. Supposing, I hope, the very unlikely and indeed impossible contingency, of an Indian Government refusing to work the scheme at all, then the breakdown clause comes into operation, and the Governor-General and the Governor have complete powers to deal with the situation.

*Mr. Zafrulla Khan.*

11,280. May I suggest that paragraph 49 also deals specifically with all these charges and makes them non-votable ?—Yes ; that is the clause giving the powers to make those charges non-votable.

*Sir John Wardlaw-Milne.*

11,281. May I ask, on clause 49, do the Pension charges come under the second head of Expenditure under the Constitution Act ?—It comes under sub-section (vi).

*Lord Eustace Percy.*

11,282. May I just clear that up ?—Is it quite true that under the White Paper these Pensions would be a charge upon the whole revenues of India ?—Has it not been contemplated that future pensions would be primarily a liability upon Provincial revenues according to the place of service of the officer ?—Yes.. If

Lord Eustace will look at paragraph 186, the second part, he will find that they remain a charge upon the Federal revenue.

*Mr. M. R. Jayaker.*

11,283. Secretary of State, there is also additional power under paragraph 92, is there not, that the Governor-General can levy taxation by asking the Legislature to pass a Finance Bill in order to safeguard his special responsibilities ?—Yes ; that is so.

*Marquess of Salisbury.*

11,284. At any rate, the Secretary of State does not think that the susceptibilities of the expectant pensioners ought to be considered in this matter. They are evidently under an apprehension that the change will damage their security. He does not think that some step ought to be taken to make it abundantly clear to them that they are in as absolutely a strong position as they were before the passing of this Act, if it becomes an Act ?—I am quite aware that many of them are very anxious. I think, if I may say so in passing, they have been made more anxious by the very active propaganda that has been carried out to stir up their anxieties ; but, realising the depth of their anxiety, I still say that they are safe and we have taken effective steps for ensuring the security of their pensions and I do not think anything further is needed

*Sir John Wardlaw-Milne.*

11,285. Might I just ask one other question of the Secretary of State : In Appendix VII, Part III, can you say whether the categories set out in that Appendix cover all those whose pensions are guaranteed at present by the Secretary of State's act ?—Would you repeat that question ? I did not quite follow.

11,286. All I want to know is whether these various categories set out in Appendix VII, Part III, page 122, cover all those whose pensions are at present guaranteed by the Secretary of State ?—Yes ; it is a continuance of the existing obligation.

*Lord Hardinge of Penshurst.*

11,287. I presume that the military officers and the officers in the British

Indian Army would be in the same position as the Civil Servants, as regards their pensions?—Yes.

*Earl of Derby.*

11,288. It is not specified though, is it?—No; I do not think it is specified, but it certainly is the intention of the Government to bring them under the same conditions.

11,289. You would be ready to bring that particular class in under the non-votable salaries on page 122?—Yes.

*Marquess of Reading.*

11,290. Does that not come in under the service for the Army?—Yes. I am informed that they are already included in these paragraphs, but we propose to make it more specific.

*Chairman.*] Lord Salisbury, I understand that you have some questions on paragraphs 109 and 121, but you will reserve those?

*Marquess of Salisbury.*] Yes. I understand the Secretary of State would rather keep them separate.

*Chairman.*] That, I think, would be as well

*Mr Morgan Jones.*

11,291. I understand the Secretary of State to propose that he would circulate his announcements on the points raised by Lord Salisbury. Will he also include in that circulated statement the statement of Mr. Wedgwood Benn?—Yes, certainly.

*Archbishop of Canterbury.*

11,292. I only want at present, Secretary of State, to ask one question on one point; no doubt it has been much discussed in the course of the evidence, but the evidence leaves me a little vague. It is in paragraph 184. What we are to consider as existing rights? I understand that is to include what are called accruing rights, and very strong pressure was brought to bear upon us by evidence that legitimate rights should include these accruing rights, but there seems to me to be a great difference of opinion between the services and Lord Peel's statement of 1923 on the advice of the Law Officers of the Crown as to what

expectations for accruing rights should really include. It was represented to us that from the point of view of some of the services accruing rights should include rights if a post to which any Member of the service has legitimate expectations of obtaining were abolished, they should obtain either a similar post or the salary of that particular post. I wanted to know what in the mind of the Secretary of State are the accruing rights which have to be specially protected?—His Grace has raised a very complicated and controversial issue, namely, as to what really is meant by an accruing right.

11,293. Yes?—We were anxious, if we could, to get away from an expression that has occasioned a good deal of doubt and a good deal of dispute in recent years. At present there are two kinds of rights; existing rights, namely, the rights to which an official is entitled when he enters the Service and accruing rights—rights to which it may be considered that he is entitled when he leaves the Service, or before he leaves the Service. I think it is clear that both those rights have got to be taken into account. Our view is that in the case of existing rights it is comparatively easy to define them, and we do set them out in the Appendix VII. As to accruing rights, two views have been taken, each of a rather extreme character: (1) That they are so vague that you cannot define them at all; (2) that they are so definite that any change in the conditions of Service in India really amounts to a repudiation of some right to which the official is entitled. We have come to the view that the wise course is to set out the existing rights, but not to attempt to define the accruing rights. We have found the more we have gone into the question the more difficult it is to define an accruing right, and it is essentially a question upon which a measure of discretion must be left to somebody. Let me give His Grace an example. Supposing a particular post—one of very many—was abolished in the administration of India for this reason or another: the effect that the abolition of one post might have upon the great body of Indian civilians would be so insignificant as to be almost indefinable. If, however, a whole class of posts were abolished, to

which in the ordinary course a civilian might look forward for promotion, then I think it might be argued that the careers of certain officials have definitely been injured. Holding that view, we propose that a discretion should be left for the compensation of accruing rights and that that discretion should be left to the Secretary of State.

11,294. I am obliged to the Secretary of State for his full and clear statement. I understand, in view of that, so far as we are concerned, "accruing rights" would really mean a reasonable expectation of special compensation?—Yes.

11,295. And the discretion as to the claim or amount of compensation would be entirely in the hands of the Secretary of State?—Yes.

Lord Snell.

11,296. My Lord Chairman, did Sir Samuel Hoare mean that? If a case arose at any particular time the Secretary of State would judge it at that time on its merits?—Yes.

Dr. B. R. Ambedkar.

11,297. My Lord Chairman. I would like to point out to the Secretary of State that the expression which we find in the Government of India Act—"existing and accruing rights"—is an expression which is also found in the South African Constitution Act. I was wondering whether it would not be possible for us to get a statement from the Dominion Office to find out exactly how that expression has been acted upon in South Africa?—We made an inquiry upon this very point Dr. Ambedkar I think did allude to it during the summer and I have asked the Dominion Office for the information. I have not yet got it, but I am told that the cases are separate and distinct. In the case of South Africa there is no promise of compensation at all.

Sir Manubhai N. Mehta.] I think they have it in Australia as well.

Dr. B. R. Ambedkar.

11,298. I simply wanted to know how the expression, "accruing rights," had been interpreted in South Africa by the South African Government. The expression is exactly the same?—I will see

if I can get it. I asked about South Africa and Australia as well.

Mr. M. R. Jayaker.

11,299. If there is no compensation in South Africa the question will not arise in that way, will it?—That is our view.

Sir Austen Chamberlain.

11,300. In reference to the answer which you gave to the Archbishop a moment ago, may I see whether I rightly understand its effect? I think the accruing rights were illustrated in a claim put before us by witnesses by the case of Commissioners. Do I understand, broadly, from your answer that if in a Province a single Commissioner were abolished you would consider that that gave rise to no claim for compensation, but if at the other extreme all Commissioners were abolished, you would interpret that as affecting the accruing rights and entitling the people to compensation?—It is difficult to give a categorical answer Yes or No to a question of that kind. For instance, the number of Commissioners varies from Province to Province, and the abolition of one commissionership in a Province where there were only two or three would, it seems to me, be very different from a case where it might be the abolition of one commissionership in a Province where there were several of them. I think that case seems to show the necessity of maintaining discretion somewhere and of dealing with cases upon their merits. Speaking generally, however, I would agree with the suggestion that seemed to underlie Sir Ansten's question, namely, that the numbers would make a considerable difference and obviously there would be a considerable difference so far as an official was concerned in his hopes for promotion if the whole of this class of posts were abolished, as compared with the abolition of, say, one post out of ten.

Archbishop of Canterbury.

11,301. Mr. Secretary of State, I have before me what I think Sir John Kerr said on this matter: "Supposing commissionerships were abolished, our suggestion is that members of the Services should receive the pay which the Commissioner would have received if the commissionership had not been abolish-



ed." You would agree that is putting a rather strong claim, and I gather from you that much would depend upon whether it was a single commissionership which was abolished or whether it was a whole class, so to say, of that office which was abolished?—Yes.

11,302. You would not recognise that in a Province where a commissionership, for reasons of economy or administration, was abolished, some member of the Service there (perhaps the most senior) who might have expected that commissionership, would be entitled to the full pay which he would have received had he got it?—I would fall back upon the answer I just gave to Sir Austen Chamberlain, namely, that easings of that kind must really be taken individually upon their merits.

Archbishop of *Canterbury*.] Thank you. That is all I wanted to ask just now.

Marquess of *Reading*.

11,303. Only one point, Sir Samuel; that is, with reference to your observations on Section 21 of the Government of India Act. You remember it arose this morning?—Yes.

11,304. And questions were put to you to elucidate the position. I just want to get one point clear from you. As I understand it, you have told us that this Section 21, which puts the obligation on the Secretary of State's Council to control the expenditure of revenues, that is, to the extent that no grant or appropriation of those revenues can be made without the assent of the Secretary of State's Council. I am referring to the Section?—Yes.

11,305. I am not paraphrasing the language. I am not being too precise about it, but I mean altogether Section 21 to which you refer?—Yes.

11,306. You said just now, as I understood and agreed, that that is a provision to protect India?—Yes.

11,307. The effect of it, as I understand it, is that, assuming that the Government here wish to appropriate part of the revenues of India to a particular purpose that could not be done unless the Secretary of State's Council agreed to its being done?—Yes.

11,308. And notwithstanding a decision of the Cabinet, the Secretary of State's Council as it at present stands, and in relation to these matters, is supreme?—Yes.

11,309. You could never alter it unless you altered the Act of Parliament?—That is so.

Marquess of *Salisbury*.

11,310. But it is not limited to cases where the British Government is intent on getting money unjustly from the Indian Government. All expenditure is under the control of the Secretary of State's Council?—Yes. In actual practice in recent times it has tended more and more to be restricted to those cases.

11,311. In practice, you mean?—Yes.

11,312. But not in law?—Not in law.

Marquess of *Reading*.

11,313. The language is very wide, as Lord Salisbury appreciates. It says: "No grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India." It is not limited in any way. I was simply dealing with what the Secretary of State had said relating to the practice. I only wanted to put one question with regard to it, Secretary of State. If the Council of India as now constituted disappears and the advisory body is substituted as proposed in the White Paper, Section 21 would cease to have operation, would it not?—Yes.

11,314. Because, of course, the authority (the Council of India) will have disappeared in that relation?—The Council of India will have disappeared, and the safeguards in future are a different kind of safeguard.

11,315. Yes?—Namely, the safeguards set out in the White Paper as contrasted with the safeguards now possessed by the Council of India.

11,316. I am not raising objection to it?—No.

11,317. I only wanted to make quite clear what the position is so that there

might be no doubt about it afterwards, but the effect is that that particular provision will cease to operate, and there will be substituted for it, that is to say, for the protection of Indian and British interests such safeguards as there are in the White Paper?—Yes.

Marquess of Reading.] That is all I wanted to ask.

Lord Rankeillour.

11,318. May I just ask a question or two on the point which was last raised. As I understand at present there is a moral but no legal guarantee of the interest on any Indian loan by the Home Government?—There is the guarantee that has been defined several times in recent years by succeeding Governments.

11,319. Yes, but there is no legal guarantee. You could not put on a prospectus for an Indian loan that it was guaranteed by the Home Government?—No.

11,320. But, at the same time, the Indian Council here in Westminster has had the power of checking Indian expenditure?—Yes.

11,321. And the fact that that power exists must have had a good effect on the security of Indian interest and the prices of India stock?—It is very difficult to say Yes or No to a question of that kind. For instance, this spring, in the middle of the controversy over the White Paper, when every kind of attack was being made upon certain of its financial proposals, upon the ground that there would be no security in the future for the investor, and so on, we issued the most successful loan in London that has ever been issued.

11,322. But gilt edged was rising all the time all round?—Even so that did not explain altogether the success of the loan.

11,323. But, surely, the fact that the Home Government could have a check on the expenditure of the Indian Government, other things being equal, must have a beneficial effect?—Other things being equal, but other things are not equal, for this reason that, under the White Paper, we make other proposals and other kinds of safeguards.

11324. Exactly, and therefore it must be the business of this Committee to see that those other safeguards are equivalent to the former?—Certainly to see that the safeguards are effective for the purpose.

11,325. I think in one of the declarations of the Prime Minister which has been alluded to, he practically intimates that it is our duty to see that they are, does he not?—I do not think there is any doubt about it. We have always said these obligations have got to be met.

11,326. Obviously, but as Lord Reading has just pointed out, one existing safeguard is being withdrawn, and therefore it makes it the more necessary that we should be quite sure that the substitution is adequate?—Yes, certainly.

11,327. It is really hearing upon this same matter: It has been suggested in Memoranda from Civil Servants, and so on, that a situation might arise perhaps automatically, without any evil intention, where there actually was not money enough in the Exchequer to pay, say, the pensions. In that case (I think I asked, if I remember rightly at one of the last sittings) I asked Sir Malcolm Hailey, whether the Governor, either the Provincial Governor, or the Governor-General, could supply the funds by Treasury Bills, or otherwise, and the answer was that he would have to assume the functions of Government; that is to say, go outside the ordinary Constitution before he was able to do so?—(Sir Malcolm Hailey.) Yes. As Governor-General he might use his special legislative powers.

11,328. Yes.—The Governor probably would have to announce a breakdown of the Constitution and take over the whole of the financial arrangements.

11,329. And that would involve considerable trouble and delay in payments?—Not necessarily, because if he took over all the powers of the Local Government, he could suspend payments on all other sources of expenditure except the pay of the servants of the Crown, and their pensions.

11,330. Would it not be possible to devise some plan whereby these, what I may call covenanted charges, should be paid automatically perhaps by an assignment or separation of certain revenues.

I only throw it out. I do not want an answer for the moment.—(Sir Samuel Hoare.) It is a suggestion that we have considered. In actual practice it is not easy to carry out, but I think it is a suggestion which the Committee must consider. We will look into it again.

11,331. Thank you. Then I have only one or two other smaller matters about which I want to ask. The Police Association in their Report, I daresay you remember, draw special attention to a fear that they have lest the Public Service Commission may interfere in police discipline. I suppose you have that possibility before your mind?—Yes, and we have no intention of powers of that kind being given to the Public Service Commissions. I think it would be a great mistake from the point of view of the Public Service Commissions themselves.

11,332. They also suggest in paragraph 29 of their submissions that the Public Service Commission on the other hand should be appointed in some way to protect the rights: Have a Standing Commission to protect the rights of the Services. Have you considered that?—Yes. Speaking generally, the proposals about the Public Service Commission are based upon the existing Public Service Commission at the centre. We think it is possible that there may be some differences between one province and another, but upon the whole we have based our proposals upon existing experience that has worked not unsatisfactorily.

11,333. You do not think it necessary to be more specific as to the powers of this Commission as the Police Memorandum suggests. I only throw it out as a suggestion?—(Sir Malcolm Hailey.) Our general view has been that the Public Service Commission should have only an advisory function. Proposals have been made, particularly from one local Government, that it shall have certain executive powers as well. I think other local Governments and the Government of India have been opposed to that and the White Paper does not take that line. The White Paper proposes to give them an advisory position only. The fear of the Police Association was that we should take away from the Inspector-General of Police the disciplinary powers that he

now has of dealing with certain classes, such as Sub-Inspectors of Police, and refer those to the Public Service Commission. It does not necessarily flow from the proposals in the White Paper that the Public Service Commission in the Province would be consulted regarding appeals on disciplinary matters from that particular class of servant. It would be necessary to place in the hands of the Governor or some other Authority power to define the class of appeals upon which the Public Service Commission should be consulted, and if that were done I think the point made by the Police Association would be met.

Archbishop of Canterbury.] May I just ask this question arising upon that, Sir Malcolm? In paragraph 199, the phrase "The Governments will be required to consult" these Service Commissions "on all matters relating," etc., would include not only what is specified there but questions of appeal arising from any sense of grievance.

Marquess of Salisbury.] An absolute right.

Earl of Derby.

11,334. There is no right in paragraph 199?—Paragraph 199, if I may point out to you, only refers to methods of recruitment, appointments, promotions and transfers.

Archbishop of Canterbury.

11,335. Where is there anything about appeals?—If you would refer to paragraph 200, you would see that provision is made for the Federal and Provincial Governments being required to consult the Public Service Commissions, subject to such exceptions as may be "specified by regulations made from time to time by the Secretary of State or a Governor, as the case may be".

Marquess of Reading.

11,336. And also the White Paper, in the last sentence of Article 201?—Yes. There does remain power under the White Paper proposals to meet the exact point that was made by the Police Association.

Sir Hubert Carr.

11,337. Does paragraph 199 allow you to exclude appointments of the subordi-

nate services of the Police from reference to the Public Service Commission, because that is where I understood the police officials laid such stress? There is recruitment from subordinate to the provincial service as well as the appointment to the subordinate service, and they wish those, I understand, very distinctly in their own hands?—I think that there is full power to keep those away from the Public Service Commission, which would not necessarily deal with subordinate services, but only with provincial services.

11,338. I think it is in paragraph 70 of the Introduction. It rather indicated to me that the Federal and Provincial Public Services there would cover all those Services, including the subordinate Services—that the whole field was covered. At the top of page 35, the Second Paragraph: "The Provincial Services cover the whole field of Civil Administration of the Provinces in the middle and lower grades." I was wondering whether paragraph 199, unless some proviso was put in, would not require the Governments to consult the Public Service Commission about appointments to lower grades of the Police and also promotions?—I think one might answer definitely that paragraph 199 as drafted does not compel them to consult the Public Service Commission regarding subordinate services, but if there is any doubt on that point, I may certainly say it was the intention that the Public Service Commission should not be consulted about the subordinate services.

11,339. That is recruitment from the Provincial to the subordinate. That again the Police laid great stress upon—not only recruitment from outside. I think they said they did not object to that coming under the purview of the Public Service Commission, but they did object to recruitment from the subordinate services to the Provincial Services?—Under the terms of the White Paper the Public Service Commission would be consulted about recruitment to the Provincial Service from the Subordinate Service or outside.

11,340. I think that was one of the things the Police wished to be left very much in their own hands as a matter of discipline?—The Governor would, I think, be able to make that exception

under paragraph 200. I think, if I might say so, that is a point for consideration by the Select Committee itself in making recommendations about the Public Service Commission; it is one of the points they would have to consider.

*Sir Abdur Rahim.*

11,341. Does it follow that all matters of promotion from the Subordinate Service to the Provincial Service or from the Provincial Service to the Imperial Service will be taken out of the hands of the responsible Government?—No, not if the Public Service Commission is given an advisory capacity only. Those appointments or promotions would be made after consulting the Public Service Commission.

11,342. What I mean is as regards the Subordinate Services and promotion, the Police evidence is that that ought to be left in their own hands; that is, the Superintendent of Police, for instance, or the Inspector-General of Police. Then, the responsible Government will have no say in the matter—is that it?—Under the Police Act all appointments, disciplinary acts and the like of the Inspector-General of Police are under the general control of the local Government.

11,343. Is the question of promotion also a disciplinary matter?—Yes; it falls within the terms of the Act; the questions of promotion are under the control of the local Government.

*Lieut.-Colonel Sir H. Gidney.*

11,344. Is it not the practice to-day that the Public Service Commission only advises the promotion—they do not appoint?—That is the practice to-day and it is proposed in the future that it should be the practice. It is only advisory.

11,345. They do not appoint?—No.

*Archbishop of Canterbury.*

11,346. Would you forgive my ignorance and tell me where exactly the Subordinate Services end and the Provincial Services begin—what grades?—In the Police the All-India Service comprises the posts of Superintendent and Assistant-Superintendent and anything above that. The Deputy Superintendent and in some Provinces the Inspectors

are Provincial Service Officers ; the Sub-Inspector and anything falling below that, such as the Sergeant or the Constable, belong to the Subordinate Police Service.

Sir *Hubert Carr.*] May I point out that the whole of that is set forth very clearly on page 144 of the evidence, in paragraph 14 of the Public Service Commission ; that defines the different grades of police and the importance of keeping promotion between the two grades away from any political interference.

Sir *Austen Chamberlain.*

11,347. Is it the intention that the appointment of a Constable to be a Sergeant should be a matter for consultation with the Public Service Commission ?—No ; that is why I pointed out that paragraph 199 stops at Provincial Services and does not contemplate Subordinate Services.

Lord *Raukeillour.*

11,348. One more matter (it may have been explained before) rather on the same lines : Paragraph 183 says that "The Secretary of State will after the commencement of the Act make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department." Paragraph 185 says, "The Secretary of State will be required to make rules regulating the number and character of civil posts to be held by persons appointed by the Crown" by himself and so on. That seems to imply that he will have an absolute discretion as to how far he will exercise his powers under paragraph 183. It does not seem quite clear. The intention as regards the police has been explained, but it does not seem quite clear what actual appointments he will make in the Indian Service, in reading paragraph 183 with 185?—(Sir *Samuel Hoare.*) It is really continuing the practice that was started under the 1919 Act, namely, that some posts are scheduled. There will have to be an up-to-date schedule of those posts.

11,349. And he can alter those now, can he?—He can now.

11,350. And it is merely a continuation of the existing practice?—It is a continuation of the existing procedure.

Marquess of *Salisbury.*

11,351. So that a district Magistrate might in the discretion of the Secretary of State be removed from the Schedule, and made subject entirely to the responsible Minister?—It depends entirely as to the procedure that is adopted. If the Schedule is in the Act, then only an Act of Parliament can alter it, unless powers are given to the Secretary of State under the Act.

11,352. Will the Schedule be in the Act?—Yes ; we propose to put it in the Act.

Marquess of *Reading.*

11,353. If he is a member of the Indian Civil Service, that remains perfectly clear, that he is subject to the Secretary of State and only to the Secretary of State in respect of all the rights which have been discussed. That is quite clear, is it not?—Yes.

Marquess of *Salisbury.*

11,354. Only to be quite certain, in the answer which Sir Malcolm was kind enough to give me just now, he said that the security which we are seeking for the District Magistrates depended upon the Schedule?—(Sir *Malcolm Hailey.*) Yes. Might I explain that position?—If you will glance at the end of the Government of India Act, in the third Schedule, pages 151 and 152, you will see that the Act prescribes there that the following offices, namely, No. 10, District Magistrate, shall be filled by a member of the Indian Civil Service ; there are a number of other posts of the same description, such as Secretary in the Government. I think I am right in saying that it is the intention that that Schedule should, if necessary, in a corrected form, be continued as part of the New Constitution Act. The power of the Secretary of State under paragraph 183, therefore, will only be to regulate the strength of cadre, and the conditions of service and to make appointments. He would not, so long as that Schedule remained part of the Act, be able to declare that all District Magistrates should be taken from any other Service than the Indian Civil Service.

*Sir Austen Chamberlain.*

11,355. What is the effect of paragraph 185?—(Sir *Samuel Hoare*.) I think the Committee ought to consider this question both from the point of view of safeguarding these posts and also from the point of view of not tying up details so rigidly as to make the working of the Constitution Act difficult. If they will look at paragraph 189, they will see there that upon the whole we think it might be better to adopt the procedure of laying a list of these posts upon the Table of both Houses, year by year, rather than setting them out in detail in a Clause or a Schedule of an Act of Parliament. In making that proposal we have not any ulterior motive in our minds of removing the safeguards, but we do think it worth the while of the Committee to consider whether that is probably the better procedure.

11,356. But the Secretary of State will forgive me—this is very difficult to understand for an ignorant person like myself, but I still do not understand what is the purpose of paragraph 185. Sir Malcolm Hailey has just given us an account of what will happen under paragraph 183, which seems to me to leave no place for paragraph 185. I have no doubt that is due to my ignorance?—(Sir *Malcolm Hailey*.) Paragraph 185 refers to those posts which are not scheduled in the Act as reserved to particular Services.

*Lord Rankeillour.*

11,357. Might I ask, under paragraph 185, will it or will it not be possible for the Secretary of State, whatever the rights of an individual may be, to take a certain class of posts out of the Indian Civil Service and hand them over to the Provincial Governments and reduce their status?—No; not if they are scheduled as before in the Government of India Act.

11,358. Is it the definite intention of the Government to continue the Schedules as now found in the Government of India Act—to re-enact them?—(Sir *Samuel Hoare*.) Yes, it has been the intention to continue the Schedule. The question about which I am in doubt is whether it is wiser to put a Schedule of that kind into the Act, or whether it is not better to adopt a procedure, as I

say, of laying a list year by year upon the Table of each House.

11,359. With power to the House to object within so many days?—Yes.

*Sir Austen Chamberlain.*

11,360. I understand that paragraph 183 contemplates that you will have a list of posts scheduled in the Act?—Scheduled in some way, yes.

*Marquess of Salisbury.*

11,361. Not necessarily in the Act?—Actually in the White Paper scheduled in lists to be laid before Parliament.

*Archbishop of Canterbury.*

11,362. But surely, Secretary of State, paragraph 189 only gives a statement of the vacancies and the recruitments made—not as to particular classes of officers?—Yes. It is none the less a question, which is the better procedure with a list of that kind, whether to put it in detail in the Act, or whether to deal with it under the procedure suggested in paragraph 189.

11,363. If paragraph 189 is to bear the construction that you wish to put upon it, its drafting will have to be very much changed?—Yes; certainly.

*Sir Austen Chamberlain.*

11,364. I cannot get clear the relation between paragraphs 183, 185 and, now, 189. Are they three alternative cases or are they all parts of one machine? Shall I try to make my meaning clear? I understood Sir Malcolm Hailey to say a few moments ago that under paragraph 183 there would be a Schedule?—Yes.

11,365. I thought that he indicated that the Schedule would be in the Act?—Yes; he did.

11,366. That, therefore, cannot be altered under paragraph 185?—I made the caveat that that is a question the Committee must consider, whether it is better to put the Schedule into the Act or whether it is better to adopt the other procedure. It is not a question of principle at all; it is a question of procedure, it seems to me.

11,367. Assuming that the schedule goes into the Act, then Proposal 185 would deal only with appointments

coming under it but not included in the schedule foreseen by Proposal 183 ?—(Sir *Malcolm Hailey*.) Yes. (Sir *Samuel Hoare*.) Yes.

*Archbishop of Canterbury.*

11,368. I do not want to make difficulties, Mr. Secretary, but to remove them. Proposal 185 deals specifically with persons appointed by the Secretary of State; that would include members of the Civil Service, and seems to give to the Secretary of State power to alter the number and also the character of posts held by these persons. It is a very wide power ?—Could Sir *Malcolm* just deal with that question ?

*Marquess of Reading.*

11,369. I was going to make one suggestion with regard to it—I do not know whether it is right or wrong. This is what occurred to me : You have the definite obligation in the one paragraph—No. 183—which says what has to be done. The Secretary of State's obligation is to make these appointments. Then there is a special provision in No. 185 which deals presumably with the number of posts and also with the making of rules regulating these posts and leaves it open to him, does it not, to give sanction if necessary, should a vacancy occur which does not require to be filled up. Is not that what happens ?—(Sir *Malcolm Hailey*.) I think Paragraph 183 refers to posts which we could describe as scheduled in one form or another. No. 185 is intended to refer to posts which do not fall within that schedule and to give certain powers to the Secretary of State to fill up such posts temporarily and also to lay down any rules regarding the filling up in any way of a post on the reserved list. Our present procedure, as Lord *Reading* knows, is of listed posts.

11,370. Or of keeping vacant a post which does not require filling up ?—Yes ; so that Paragraph 185 really refers mainly to posts not on the reserve or scheduled list and keeping open posts on the reserved or scheduled list.

*Archbishop of Canterbury.*

11,371. It is obvious, Sir *Malcolm*, that if your interpretation of 185 is

right the drafting of the first sentence of that proposal will have to be very much changed, because, as it stands, it gives very much wider powers ?—(Sir *Samuel Hoare*.) I should think it might perhaps be convenient, after this discussion, if I circulated a note showing how these three clauses interlock with each other.

*Sir Austen Chamberlain.*

11,372. That would be the best way ?—They really are complementary and I think I can make that clear in a note, but it is rather convenient with this variety of services and this variety of service conditions.

*Mr. M. R. Jayaker.*

11,373. May I suggest that the Secretary of State should consider carefully whether he agrees with Sir *Malcolm*'s interpretation of No. 185 because Proposal 185 by the words used does apply to the reserved posts ?—I think there is something in what Mr. *Jayaker* has just said, and we will make a note for the guidance of the Committee.

*Mr. Zafrulla Khan.*] May I suggest for your consideration, as well, Secretary of State, when that note is being prepared, that 185 does contemplate something like this : The schedule says that District Magistrates shall be appointed from the Civil Service, but there is power to the Secretary of State to say that in such-and-such a Province there shall be 20 Indian Civil Service District Magistrates and that the number of Indian Civil Service District Magistrates shall not go below so many : that is to say, the number of each cadre to be in any post is specified by the Secretary of State. He has power to say that the Province shall employ so many Indian Civil Servants in their cadre, and so on, with regard to the other services. That is one way in which even the scheduled posts would come under the direction of the Secretary of State. There are several other aspects and I think Mr. *Jayaker* is right in suggesting that the proposal is intended to govern all posts in the scheduled list.

*Mr. M. R. Jayaker.*

11,374. May I ask your attention to Appendix VII on page 120, right No. 10.

I think proposal 185 refers to that right : "Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or local Government." I think Proposal 185 states more elaborately the right mentioned in that clause?—That is so.

11,375. And it does apply to all scheduled posts on the interpretation I suggested and which Mr. Zafrulla Khan has just put before you?—Yes.

Marquess of Reading.] May I suggest the matter should be left after the suggestion the Secretary of State has made? If it is going to be considered and the Secretary of State is going to circulate a note to us, it can then be considered; but it does not seem to me that we shall get very much farther by discussing it now.

Lord Rankeillour.

11,376. Will the Secretary of State set out in the statement what the posts are which are to be set out in the schedule, whatever the effect of the Schedule may be, and what are the posts he proposes to reserve some discretion about under Proposal 185, as far as can be done?—I am not sure whether I should be in a position now to set out a list of these posts. I am in communication with the Government of India upon the subject. Some time or other I may do so. I do not think I can do so now. What I can do now is to circulate a note explaining the answers to the kind of points that have arisen on these three clauses.

Lord Rankeillour.] I will not press it further, as long as it is kept in mind.

Sir Abdur Rahim.

11,377. Will the Secretary of State make it quite clear whether under Clause 185 the Secretary of State will have the power to add to the number of certain posts?—I will take that point into account in the note.

Sir Abdur Rahim.] Thank you.

Sir Reginald Craddock.

11,378. I am sorry to advert to pensions for a moment, but would the

Secretary of State draw a distinction between pensions which are paid by the Government and family pensions funds which have been paid by the subscribers under a compulsory system of subscriptions?—I have always thought that there is a difference between what is called the family fund and the other pensions funds. The family fund is, speaking generally, a fund exclusively of contributions made by the officials themselves. Moreover, in the nature of things, it is a fund, the obligations of which go over very many years. I had, for instance, brought to my notice a case that I think went over 90 years that was covered by family fund contributions, whereas in the case of the pensions the obligation is more easy to define and the obligation falls due at a date when it is much easier to define it. Keeping in mind those distinctions, I have always thought that there are strong arguments to be urged for funding the families fund. I have always understood that the contributors very much wish to see it funded.

11,379. Yes; that is quite correct?—And I have and so has the Government of India during recent months been circularizing all the contributors to the fund, and the answers that we have got all go to show that there is a general wish that this fund should be funded. I hope that we shall be able to carry into effect a scheme that over a period of years will fund it. It must take a number of years for the process to be carried out unless a very heavy obligation is to be put on Indian finances and I think also it will mean (and this fact we have pointed out to the subscribers) that a comparatively low rate of interest will be received on the fund and therefore the accumulations may be smaller in the future. The members of the fund, however, realize that inherent factor and, speaking generally, they want the fund funded and we are also ready to fund it if it can be done over a series of years and upon the kind of terms that we have put to the subscribers.

11,380. I was going to ask whether, although there is no question of the British Government at the present guaranteeing pensions, the British Government would guarantee those funds until such time as they have been funded. It takes a good many years?—No. My



general answer would apply to that question just as it did to these other pensions. The British Government could not undertake a new obligation of that kind—an obligation which, in my view, would be unnecessary. There is not the least risk of these obligations not being met.

11,381. Would not the Secretary of State draw a distinction between repudiation, which there are full powers to prevent, and default owing to bad times, owing to failure of crops, or action taken by the local governments, say, to an absolute prohibition as regards liquor through which the resources of the Provinces and of the Federal Government itself might be at a very low ebb, in which case it would be almost impossible for it to meet the whole of these obligations. For example, supposing there was any default in the payment of the debt, that would create a great blow to credit, a much greater blow than if there was default in the matter of pensions. Does not the Secretary of State think there is a difference between those two risks?—No, I do not think I do. After all, these obligations, I suppose at the most, amount to four millions a year, Civil and Military; and I cannot conceive a state of affairs arising in which with the revenues of India there would not be this four million to meet this charge. It is a very small percentage of the revenues of India.

11,382. There is another question—I again apologise for referring to it, but I would like it to be made clear. Is it now proposed that the very term “accruing rights” should disappear from any Constitution Act?—There again upon a point like that I should like the advice of the Committee. The arguments against it appearing are that it is a phrase that has created a good deal of controversy and it is a phrase also upon which the Law Officers of the Crown have given a very definite interpretation. That, in the main, is the argument against it appearing in the Constitution. The arguments in favour of it appearing in the Constitution is that undoubtedly members of the Services attach considerable importance to it, and that it is certainly the intention of the Government to admit the claim to rights of this kind

within the general definition that I have given earlier this morning.

11,383. They would be left at present to the last sentence of the first paragraph of No. 182, would they not: “The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded”?—Yes.

11,384. Does that contemplate the possibility of the abolition of say a class?—Yes.

11,385. Such a class, for example, as superintending engineers?—Yes, that is so.

11,386. Could not the Secretary of State, if the word “accruing” is so very difficult, think out, with his legal advisers, some form of words which would give statutory effect to these particular cases—an alternative form of words which would define to some extent the distinction between a casual single appointment abolished and the disappearance of a whole class?—We will think again as to whether the phrase “accruing rights” had better come into the Act in any way, but I think anything in the nature of a precise definition would be quite impossible in view of what I have said in answer to other questions earlier this morning.

11,387. Yes; but would not it be possible to define it in some way dividing the two cases which you have distinguished into classes?—I do not think you can. If Sir Reginald would refer to the kind of answers that I gave to Sir Austen Chamberlain as to the case that he mentioned, the case of commissionerships, it is very difficult to make a precise definition and it really comes back to this, that somebody or other has got to have discretion for dealing with cases upon their merits.

11,388. Can Sir Samuel Hoare tell me whether, as a matter of fact, under the existing Government of India Act, and in consequence of the abolition of any posts of commissioners or superintending engineers, or conservators of forests, any such compensation has hitherto been given?—I do not think any case has arisen. There has been no general abolition of any type of post as far as I can remember.

11,389. I think there has been a rather large reduction in such posts as superintending engineers, for example ; that is to say, that perhaps three or four have been reduced to two. I believe there have been instances of that kind ?—Perhaps Sir Malcolm Hailey would say a word about that. (Sir Malcolm Hailey.) In two of the Provinces at least, such posts of superintending engineer have been reduced, and I believe that it is still under discussion between the Government of India and the Secretary of State as to whether any special terms are to be given to the Service in consequence of that reduction. That is the only class that has so far been affected in any considerable measure.

Mr. Zafrrulla Khan.

11,390. Is it correct that in those two Provinces the reduction is due solely and entirely to financial considerations of the Province ?—It was a retrenchment measure.

Sir Reginald Craddock.

11,391. Then there is only one other question I wanted to ask about, Proposal 183 deals with the Indian Civil Service, the Indian Police and the Ecclesiastical Department. There is no mention there of the Indian Medical Service ?—(Sir Samuel Hoare.) That is so.

11,392. Some time ago, I think Sir Samuel told us that there was still correspondence going on with the Government of India about that, early in the summer ?—Yes.

11,393. It is a very important Service, as the Secretary of State will agree ?—Yes.

11,394. And also on account of its connection with the Army it is very essential that it should be considered part of the security Services because so much depends upon it ?—Yes.

11,395. There is an answer that you gave, Sir Samuel, on the 24th July, 1933, in answer to Sir Ernest Graham-Little : " All Members of the Indian regular Services, both military and civil, whether or not they hold His Majesty's Commission, are in the same position as regards the payment of pensions in respect of their Indian Service. The position is

that these pensions have been in the past and are now charged to Indian revenues alone and it is proposed that they should continue to be so charged under the New Constitution " ?—Yes.

11,396. That is an answer which you gave comparatively recently, in July last ?—Yes.

11,397. But in paragraph 185, the reference is to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State. Appointments by the Crown do not seem to find any place in paragraph 183. Are they considered to be appointed by the Secretary of State for the purpose of the control ?—I am not quite sure whether I have followed Sir Reginald's point. Is it this, that the Indian Medical Service is not included in paragraph 183 ?

11,398. Yes ; that is one point. The other point is that persons appointed by the Crown are not included in paragraph 183, nor are they included in 182 ?—We could bring them in though under 188.

11,399. That refers only to a civil capacity, whereas your answer the other day put them all on the same footing ?—Yes ; on the military side no difficulty arises, does it ? It is a reserved subject.

11,400. Yes ; but in the Indian Medical Service it arises ?—I quite agree with Sir Reginald. I am in this difficulty about the Indian Medical Service, that there still is correspondence going on between the Government of India and the India Office. Substantially we are agreed, but there are certain outstanding details still to be discussed. It is a question that obviously the Committee will wish to consider, and as soon as I am ready I am prepared to discuss it with them ; but I agree with Sir Reginald that it is probable that paragraph 183 will have to be re-drafted in view of our discussion about the Indian Medical Service.

Mr. M. R. Jayaker.

11,401. May I suggest to the Secretary of State in this connection, while he is on this subject, that I wish to draw his attention to the majority recommendation of the Services Sub-Committee at page 66 of the First Round Table Conference Report ; this Committee consisted

of Indians and Britishers both and this is their recommendation: "Subject to paragraph 1, the sub-committee are of opinion that in future there should be no civil branch of the Indian Medical Service; and that no civil appointments either under the Government of India or the Provincial Governments should in future be listed as being reserved for Europeans as such." May I suggest that the Secretary of State should take into consideration this recommendation when he is considering the whole question of the Indian Medical Service?—We have taken it, Mr. Jayaker, very fully into account. The problem, however, is a very difficult one. The problem, if I may state it in a sentence or two, is this: Firstly, we have to provide enough Doctors for the Army; secondly we have to provide enough Doctors for the Army Reserve; thirdly, we have to provide enough Doctors for the Services, particularly the European Services. The further we have gone into the question the more we have been convinced that in order to carry out those obligations, recruitment must go on for the Indian Medical Service, and that there must be posts for the Indian Medical Service that will enable them to fulfil those three conditions. I state the problem rather crudely to-day in those two or three sentences to show that it really is a difficult problem of hard facts and that whatever arrangements are made, those three conditions must be met, namely, the Army demands, the Army Reserve demands, and the demands of the Services for Medical ministrations.

11,402. But outside those three requirements, there has been no further recruitment for the general purposes of the Medical Service?—I would prefer not to go into a question of that kind until I can go into the whole question completely. I will only say to-day that you must make the Service sufficiently attractive in order to get your recruits in for those three purposes, and that factor must be taken into account.

Lieut.-Colonel Sir H. Gidney.

11,403. Secretary of State, is it not a fact that if the recommendations of the Services Committee were carried out in a matter, and the Provincial Govern-

ments had to supply British Medical Officers for their Medical Service, it would become a very prohibitive cost?—I was not thinking so much of the cost, though I agree that is a very serious issue: I was thinking rather of recruitment. Here, again, it is a practical question as to what is the best method for getting the men into the Service who are required for those three purposes.

Archbishop of Canterbury.

11,404. May I ask for information, Secretary of State, who at present appoints the Indian Medical Service? It is not in the All-India Services or the Provincial Services, as we have them put before us here?—It is the Secretary of State.

11,405. Does it rank as an All-India Service?—Yes.

11,406. Why is it not included in 35?—It is not included for this reason, that there have been these special problems arising about the Medical Service, and we have not been in a position to make definite recommendations. Your Grace, it is primarily a military service and so far as it is a military service, it is a reserved service. The question that has been discussed at some length in the past, and no doubt we shall discuss it again, is the question of the civil appointments.

Sir Abdur Rahim.

11,407. There are two other military Medical Services, the R.A.M.C. and the I.M.D.?—The R.A.M.C., of course, is War Office, British Army, and the I.M.D., Sir Malcolm tells me, is a Subordinate Service.

Sir Austen Chamberlain.

11,408. Are the whole of the Doctors of the Army in India appointed by and subject to the War Office at home?—No; there is the R.A.M.C. for the British personnel. There is the I.M.D. for the Indian personnel.

11,409. I thought you just said the I.M.D. was under the War Office?—No, the R.A.M.C. is under the War Office.

Marquess of Salisbury.

11,410. But you said the I.M.D. was a military service, did you not?—Yes.

11,411. Under whom is it?—Under the Secretary of State.

11,412. It is part of the Indian Army?—Part of the Indian Army.

Sir Reginald Craddock.

11,413. They have the King's Commissions, have they not?—Certain Members holding civil appointments outside.

Mr. Zafrulla Khan.

11,414. May I suggest that the question really is not so much who shall be recruited into the Indian Medical Service and under what conditions; there is no trouble about it; naturally the Secretary of State will continue to recruit into the Indian Medical Service. The question is whether the Secretary of State should have power to continue to prescribe and force the Provinces to employ a certain number of these Indian Medical Service Officers into their Civil appointments?—Yes; that is so.

11,415. And whether that is consistent with the Medical Department being transferred under the Constitution and being made a Department to be administered by the Provincial Governments?—Yes.

Lieut.Colonel Sir H. Gidney.

11,416. Is not the I.M.D. under the Secretary of State—all its regulations?—Yes; ultimately, as part of the Indian Army it is; that is the I.M.D., which is the Indian Medical Department, which is the Subordinate people in the Medical Service.

Miss Pickford.

11,417. Does the Secretary of State at present in recruiting for the public services follow generally the rate of Indianisation as recommended by the Lee Commission?—Yes.

11,418. But that is a matter of convention and not laid down by any Statute?—No; it is in no Statute.

11,419. Is it contemplated under the White Paper that this shall be left to the discretion of the Secretary of State

so that he can accelerate or retard that process?—Yes. It is under the White Paper proposals intended to continue the existing procedure.

11,420. But as a matter of convention?—Just as it is now—to continue the procedure.

Sir John Wardlaw-Milne.

11,421. I want to ask the Secretary of State one question in regard to paragraph 49, first of all, in which it is stated that the various Headings of Expenditure shall be subject to discussion in both Chambers. Amongst those is No. (vi), salaries and pensions. In view of the statement which he has made this morning would he tell me why it is desirable that matters of pensions which cannot be voted upon should be discussed in the Chambers? Is that not a little likely to give rise to possible misunderstandings—to have a discussion on a matter of this kind, which the Secretary of State has made such statements upon this morning?—It is the procedure that we have proposed for this category of reserved subjects. Perhaps the most conspicuous case is the Army; there, we do propose that discussions should be allowed, but that the expenditure should be non-votable. We have taken the reserved subjects together and we have treated them in the same way. That is really the answer.

Marquess of Reading.

11,422. That has been the practice hitherto, has it not?—Yes.

Marquess of Reading.] Under the Act, it is open to the Governor-General to permit that discussion, and he always has permitted it in my experience.

Sir John Wardlaw-Milne.] In the case of the Army?

Marquess of Reading.] Yes. I am only giving that as an instance.

Sir John Wardlaw-Milne.

11,423. I was going on to suggest that there is a difference in a large matter such as the question of expenditure and the matter of pensions?—I would say there cannot be any possible doubt about the decisions in any of these cases. 1

would not distinguish between one and the other, and I would suggest to Sir John Wardlaw-Milne that there is rather a political danger in isolating one particular question. It has seemed to me in my experience at the India Office that if you do isolate a particular question from the other questions you concentrate upon it much more fire than you would have if it was not so isolated.

11,424. Then with regard to paragraph 184—I do not want to press this question if in fact the Secretary of State is going to bring up a set of proposals about it, but there it is stated that the officers of the Provincial Departments will be controlled by the Secretary of State, and in regard to those of the external departments, they will be under the Governor-General. All I wanted to ask is whether they will be appointed by the Secretary of State?—Yes. It is simply a question as I said before, of constitutional drafting; in either case it is the Governor-General or the Viceroy acting at his discretion, but, in one case, the Service comes within the ambit of the Constitution and in the other case it is within the field of paramountcy and outside it.

11,425. Then, one last question with regard to paragraph 188, to which reference has already been made—the question of Officers who are available for a post which would ordinarily be appointed by the Secretary of State. It is stated that they “may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State.” Is there any particular object in that being “may” instead of “shall”? Should they not have that as a right if they occupy these posts? I do not quite follow the object of making it optional. Has the Secretary of State considered that? It is not very clear to me at any rate as to at whose option this is to be?—(Sir Findlater Stewart.) The proposal is that the Secretary of State should have the right. I think one reason for not putting it in the form that they shall have all the rights of a member of the Indian Civil Service is that it is impossible in practice to do everything. For example, members of the Indian Civil Service at present subscribe to a Family Pensions

Fund under very elaborate rules. You cannot take a man in at the age of 45 and make him eligible for things of that sort; it is impossible to make the story complete; but the intention is that so far as protection is concerned the two categories shall be put on the same footing.

11,426. May I put my question in this way: Does not the use of the word “may” jeopardise that security or possibly jeopardise that security?—No. It is a case, I think, where “may” means “shall” subject to practical possibilities. I am told it reproduces Section 98 of the Act at present and they do in practice always have that protection.

[Sir John Wardlaw-Milne.] Still the conditions in future are to be rather in control. I suggest for consideration whether that security is not jeopardised by the use of the word “may”—that is all.

Lord Eustace Percy.

11,427. Secretary of State, could you explain to me what are roughly to be the functions of the Provincial Public Service Commission in regard to recruitment? They are to conduct the examinations, but are they to have any final say in what those examinations shall be—what shall be the qualifications of a candidate?—(Sir Samuel Hoare.) I would have thought that the Provincial Public Service Commission would be given general instructions by the Government to recruit such and such a number of officials, and within those general instructions the Public Services Commission would have such latitude as the Government gave it; but I do not contemplate the Public Services Commission laying down, perhaps against the approval of the Provincial Government, rules of its own.

11,428. But take a contrary case like the Medical Service of a Province. Would the Government, the Cabinet, of the Punjab, for instance, be able to lay down to the Public Services Commission that no recruit was to be accepted unless he had a medical degree from the University of the Punjab?—I would have thought off-hand that that was a

general rule that the Government could lay down.

11,429. Then the Cabinet could also lay down that a certain service should in its opinion be recruited by nomination and not by examination?—Yes; that, I understand, is the present practice.

11,430. Then what precisely is the guarantee in respect of recruitment offered by the Public Service Commission?—I have never emphasised myself the guarantee side of the activities of the Public Service Commission. I have thought that its main use was to take these posts out of the personal purview of individual ministers, and in that way to save the ministers a great deal of trouble and tiresome pressure. I have always regarded the Public Service Commission more from that point of view than I have from the point of view of an actual guarantee.

11,431. That is what I meant by guarantee. It is a guarantee against politics entering into recruitment, but, if all the conditions of recruitment, even down to the prescription of nomination, may be laid down by the Cabinet, and cannot be laid down by the Governor except on the advice of his Cabinet, I do not see how you can keep politics out of it?—You keep politics out of the individual case. Is not that so?

*Sir Austen Chamberlain.*

11,432. Supposing the Governor laid down a rule that all appointments should be by nomination, is there anything to prevent that?—It would be possible, under the White Paper, certainly for a Governor to take that action, but it would then be for the Public Service Commission to recommend names within that condition, and, in that way, Sir Austen will see that the individual cases would be taken from individual treatment, and put under what we should hope would be an impartial body.

*Lord Eustace Percy.*

11,433. But, in practice, the Secretary of State will probably admit that when you come to nomination, the nominating body, appointed as the Public Service Commission, would, as in similar cases in this country, almost inevitably be a

departmental body such as the body which nominates Inspectors of Schools at the present moment, and, the moment you get it inside the Department, you immediately get the possibility of pressure on the Minister?—Is there Ministerial pressure with Departments of that kind? I have never known it in my experience here.

*Lord Eustace Percy.*] No not here. Would I be right in saying this, that the position of the Civil Service Commission here has been built up gradually on the basis of its personal prestige, and that that will be the case with the Public Service Commission in India, and that their real influence will depend almost entirely upon their personnel, and on the kind of position they are able to build up as advisers to the Government.

*Major Cadogan.*

11,434. Who will appoint the personnel of the Public Service Commission?—The Governor on his own discretion. To go back to your question, Lord Eustace, I would agree generally with what you suggest.

*Lord Eustace Percy.*

11,435. If you have got to find individuals whose personal influence will be of that kind, and if you have to build up the position of the Public Service Commission on the personal influence of such people, do you contemplate with equanimity the appointment of ten Public Service Commissions, all with such exalted positions in India, that they will enjoy the same prestige as the Civil Service Commission here?—We have some experience. We have the experience of the Central Public Service Commission, and we have the experience of the Public Service Commission in Madras, and in each case the Commissions have, so I understand, worked well. No doubt some of the Indian delegates will add from their own experience their own views upon these Commissions, but my experience goes to show that they have worked well. We have circularised, I think, every Provincial Government, and I think, without exception, every Provincial Government has wished to start the same kind of organisation.

11,436. But, in fact, only Madras has started one of its own volition up to now?—Yes.

Mr. *Zafrulla Khan*.] As a matter of fact, the Punjab Legislative Council has passed a Bill authorising the setting up of a Public Service Commission, and they are only waiting for the new Constitution to come into force to start it as from the date of the new Constitution, and I am not perfectly certain, but, I think, power is given in that Act to the Governor to specify what appointments shall be made through the Public Service Commission—not to the Cabinet, but to the Governor.

Lord *Eustace Percy*.

11,437. Would I be right in saying that if you were asked to set up simultaneously eleven Civil Service Commissions in England, Wales and Scotland, you would hesitate to do so, and wonder whether you could get the personnel sufficient for such appointments?—In the first place, it is the difference between a population of 270,000,000 and a population of 45,000,000, but I am not basing my answer on that at all. If it was found impossible in some of the smaller provinces to find this personnel there is no reason why provinces should not combine. That is provided for.

Dr. B. R. *Ambedkar*.

11,438. There is nothing to prevent a Public Service Commission being appointed for one province or for two provinces?—No; we do make provision for that purpose.

Lord *Eustace Percy*.

11,439. Have you ever considered the possibility of establishing something in the nature of a Federal Public Service Commission at the centre representing the Provinces on a Federal basis, but unifying recruitment?—We can hear the views of the Indian delegates upon a question of that kind. My own view, from what enquiries I have made, is that most of the provinces will want to have these Commissions of their own.

Sir *Abdur Rakim*.] That is so.

Mr. *Zafrulla Khan*.] If an Inspector of Schools was to be appointed to the Punjab, no one in the Punjab could be

expected to ask a Federal Public Service Commission to appoint one for them.

Lord *Eustace Percy*.] I was not suggesting that, but I do not want to get into discussion.

Archbishop of *Canterbury*.

11,440. Under Proposal 199 the Governments are required to consult these Public Service Commissions on matters such as have been raised by Lord *Eustace Percy*. Supposing a Provincial Public Service Commission entertains the strongest possible objection to a proposal made by the Provincial Government, at present it has no power to control the Government. Has it any power, or do you propose to give it any power, to refer any matter about which it feels very strongly to any other body such as the Federal Public Service Commission, or the Secretary of State, or otherwise?—I do not think you could possibly have the right of appeal to the Federal Government from a provincial organisation of this kind. I think if you did it would strike very much at the roots of provincial autonomy, and there would be great resentment anyhow in some of the provinces. Further than that, there are the two conceptions of the Public Service Commission; the one that it should have executive power; the other that it should be only advisory. We have chosen the latter alternative, namely, that, quite definitely, the Public Service Commissions that we contemplate should be advisory. I can quite see there are arguments to be used for either of those alternatives. Let me suggest only one to His Grace as an argument against a Public Service Commission having executive power. There is a great risk in that device that you will get a new kind of dyarchy in a province, and that you may get (to take the most difficult and critical instance of all) the Public Service Commission taking one line about communal arrangements, and the Government taking another line. On that account, and also on account of the fact that the existing Public Service Commissions in India have been advisory and have worked well, and have exercised a great deal of influence, even though they have had no executive power, we have thought it wiser to keep them as advisory bodies.

11,441. I was not suggesting executive powers, but whether there would be any power to see that there would be some degree of uniformity in the different provinces, and whether the advice of a Public Service Commission on an important matter, if it was against the Government, might have any reference to some other co-ordinating authority?—It is very difficult to see what that co-ordinating authority should be. I think there is every kind of objection to be urged against the Federal Government being the Court of Appeal in provincial questions of that kind.

*Marquess of Salisbury.*

11,442. There is another kind of Court of Appeal which the Secretary of State might consider, namely, the publication of the advice of the Public Service Commission?—Yes.

*Marquess of Salisbury.* So long as the Public Service Commission advise in private, and are overridden in private, it might come about that they would be treated with very little more than contempt by the Minister, but, if it was known that whatever they said would be published, then there would be a real security that their advice would be attended to.

*Lord Eustace Percy.*

11,443. The real danger seems to me to be this that, possibly, if you have ten Public Service Commissions in India, the advice that you get from the academic persons on those Commissions will not be advice which will carry nearly the weight which the educational advice of the Civil Service Commission in this country carries to-day. It is advice which might be rejected. It is the danger of having an academically weak Commission advising the Government, that the Government may have to take the matter into its own hands?—I can only say once again that the two existing Public Service Commissions have worked well, and they have not been academic. *Lieut.-Colonel Sir H. Gidney.* They have worked very well.

*Lord Eustace Percy.*

11,444. Their advice has been given by their academic Member?—I do not know

what Sir Eustace means by "academic Member," but there have been men on both those Commissions who have been very closely in contact with public life at many of its angles.

11,445. I agree?—Even if Lord Eustace's criticisms are correct (and I do not want to dogmatise on a question of this kind) I do not know quite what alternative it is that he suggests.

*Archbishop of Canterbury.*

11,446. Would the Secretary of State consider giving an answer to Lord Salisbury's suggestion?—I have great sympathy with what Lord Salisbury said.

11,447. That would largely meet my point. May I understand the Secretary of State replies to Lord Salisbury's suggestion that he considers it very favourably?—Yes, certainly. I have great sympathy with it, and I have always felt in matters of this kind, judging from our own experience here, that publicity is a great safety valve.

*Sir Hari Singh Gour.*

11,448. I want to ask the Secretary of State whether he has also adverted to the other side of the question that if the advice given by the members of the Public Service Commission, either individually or collectively were to be published they would not be free to give the same independent advice upon individual cases which they would be free to do if they knew that their advice would be treated as in confidence?—I think one would certainly have to leave some discretion to someone. Quite obviously you could not possibly make a rule that all the proceedings of a body of this kind should be published, but I think within that limitation one might insure their voice being heard if they wished their voice to be heard.

*Lord Eustace Percy.*

11,449. I do not want to get into a discussion. May I simply say my general idea is this: The tendency in this country has been to bring all the Government Departments, except the Technical Departments, increasingly under one Civil Service examination laid down by academic authority?—Yes.

11,450. It has been done within the last 20 years in the case both of the



Foreign Office and the Board of Education. It seems to me that India will find the same thing that except for technical Departments and certain outside appointments like Inspectors of Schools, the best course is to recruit under one general examination, and not to have special requirements. If that be so, the point of having a Provincial Commission for the great bulk of the Departments will go, and for the whole recruitment, subject, of course, to conditions that a province should have its own people speaking its own language, and so on, the examination for the bulk of all the Departments could be conducted by a Central Commission, and it would be a valuable Federal organ built up by consultation between subordinate Civil Service Commissions in the provinces and the Centre. That is my general idea?—I should be very glad in the course of our discussions, or my examination, to hear the views of other Members of the Committee and the Indian Delegates upon a question of that kind.

*Mr. Morgan Jones.*

11,451. I am not quite sure that I followed the implication of one of the answers which Sir Samuel Hoare gave earlier in regard to compensation. If I have misunderstood it I apologise. Do I understand that it is proposed that someone (either the Secretary of State or someone else) should be in a position to compensate for loss of prospective office?—Yes, within the terms of the answers I gave earlier this morning.

11,452. Is there any parallel for that in the English Civil Service?—I could not say offhand. I do not know whether there is or not. It has always been admitted to some extent in the Indian Service.

11,453. Does the cost of this compensation for prospective office fall upon the Indian revenue?—Yes.

11,454. May I enquire how far down the hierarchy of officers does this right of compensation extend?—It is just that kind of difficulty that made me say you must take every ease upon its own merits. It is not a new issue at all, Mr. Morgan Jones; this is an issue that has been in existence for many years.

*Mr. M. R. Jayaker.*

11,455. Is the Secretary of State aware that Sir John Kerr in his statement confined the compensation to only one man for one post? He did not go down below. May I just ask your attention to Sir John Kerr's statement on this point? In Volume IIA, at pages 33 and 34, this is what he said; he did not make a higher claim than this; of course, we think that even this is very high. "I said the other day that I thought there would be no immediate saving. We have gone into the figures and we think we can safely say that there would be an immediate saving for this reason. In a province with five Commissioners at Rs. 3,000 a month, if you abolish those five posts you get an immediate saving of Rs. 15,000 a month. Under the scheme which we have placed before the Joint Select Committee an allowance of Rs. 500 would be attached to five posts on the time scale to compensate the service for the loss of the Commissioners' posts. The cost of those five allowances would be only Rs. 2,500, so there would be an immediate saving of Rs. 12,500 a month." What I am suggesting to the Secretary of State is that even this statement does not go so high that the compensation could percolate down to the bottom of the Service, but should be only given to the next person who was an expectant?—Generally speaking, that is so, and I, in saying that this right should be continued in some form, am not making in any way an extravagant claim.

*Mr. Morgan Jones.*

11,456. So that in cases where on account say, of the necessity for retrenchment, a particular post may have to be abrogated, the question of possible compensation would have to be taken into account?—Yes; certainly; and Mr. Morgan Jones must keep in mind the way that right has been interpreted during the last 15 years. Sir Reginald Craddock pointed out that certain posts have been retrenched, but that so far no question for compensation had been admitted.

*Lord Snell.*

11,457. Just two questions, in regard to compensation. Suppose that in the

process of reorganisation some section of the India Office Staff were redundant, let us assume they are in the Department of the establishment of the Indian Army : How would their acquired rights in regard to promotion and so on be dealt with ?—I think there again they would have to be dealt with case by case.

11,458. Suppose there was a group—assume there might be a group ?—I would certainly say that, supposing under these new arrangements a large part of the Staff of the India Office were abolished owing to changes in the Office, the general claim to compensation must be admitted. As to how that claim should be applied, I think that must be a case of taking the cases on their merits.

11,459. Then, in regard to the Medical Service, has the Secretary of State contemplated the possibility of there being established an Indian Medical Board that would endeavour to exclude British qualified men in the same way as the Doctors' Trade Union in this country excludes people with foreign qualifications.

11,460. As Lord Snell will remember there has been a good deal of controversy between some of the medical authorities here and some of the medical authorities in India about qualifications. I have been doing my utmost in the last year or two to try to make a *modus vivendi* between these bodies, and I hope in the next two or three years such an arrangement will be made. It is because the position is still somewhat indefinite that we have left the treatment of the medical qualifications rather open in the Clause dealing with discrimination—I think one of the Clauses between 120 and 130.

11,461. I specifically excluded the reference to the difficulty, but may we assume from Sir Samuel that the outlook in that matter is favourable for an arrangement ?—I think it is much better ; I would not go further than that.

Mr. M. R. Jayaker.

11,462. Has not a Bill been recently passed by the Indian Legislature ?—A Bill has been recently passed. I have not got the debate or the full details about it yet, but it is all a step, as I hope, in the direction of agreement.

Lieut.-Colonel Sir H. Gidney.

11,463. Has not the Bill that has recently been passed in the Legislative Assembly decided that there will be a four-year limitation to the reciprocity of medical qualifications ?—It is just because of that very question that I was rather cautious in the answer that I gave just now. It is an improvement certainly in the direction of agreement, but this Committee has obviously got to consider what, if any, safeguards are needed after the period specified in the Act that recently was passed.

11,464. What I was trying to get from you, Sir Samuel, was that since this Bill has been passed limiting it to four years, is there not a danger that after that period elapses there will be a refusal to recognise other cases, as Lord Snell tried to indicate in his question ?—I think there might be a possibility : I would not go further than that. I think I would suggest that this is really a question of discrimination rather than of service rights. I am going to give evidence about discrimination in a few days time and I think perhaps it would be better to deal with medical qualifications and other professional qualifications then.

Mr. Coeks.

11,465. Secretary of State, with regard to paragraph 178, I notice that the salary of the advisers is left blank ; at what stage in our proceedings is that to be filled in, or have you a figure in your mind to suggest to the Committee ?—I have not formed a very definite opinion about that ; I do not think it is a question of very great importance ; I do not much mind. We could make a suggestion perhaps, at any time.

11,466. Seeing that the salaries are to be paid by moneys provided by Parliament does that mean that the individual appointments must have the approval of Parliament ?—No ; it would be as it is now.

11,467. Names would be submitted to Parliament ?—No. I do not know whether there was in Mr. Coeks' mind the fear that we were going to involve ourselves in a heavy expenditure for this new kind of Council. That is not so. It appears to me that the Council will be

smaller in numbers and involve the British taxpayers in substantially less expense than the Council does at present. The numbers are reduced and the question of salary must depend to some extent of course upon the duties that they are expected to perform.

Archbishop of *Canterbury*.

11,468. Arising from your answer, Secretary of State, paragraph 189 does not mean a statement of names, but only of vacancies made and of recruitments made. Does that mean names, because you said just now that no names would come before Parliament?—I think His Grace was under the impression that Mr. Cocks was dealing with paragraph 189. He was dealing with paragraph 178. dealing with the Secretary of State's New Council?

11,469. Yes; but I understood you to say that no names of appointments made would ever come before Parliament?—Of the Secretary of State's Council.

11,470. I beg your pardon?—I used the term "Council"—council generally.

Sir *Austen Chamberlain*.

11,471. I suppose the appointments will be made as to the present Council, that is to say, not subject to the assent of Parliament, but they will be always known to Parliament and the action of the Secretary of State might be challenged in Parliament if desired?—Yes.

Marquess of *Salisbury*.

11,472. The money provided by Parliament—is that an annual vote on the Estimates in the usual way?—Yes, it would be a part of the Office Vote.

Mr. *Cocks*.

11,473. Under the Membership which may be between 3 and 6, is there any proportion suggested for Indian Members?—We leave it free but there is no intention of exclusion in any way.

Mr. *M. R. Jayaker*.

11,474. At present there is a specific provision, is there not, that these will be Indians?—No: it is quite open. In actual practice, there always has been

representation of Indian Members and they have been extremely valuable.

Sir *Austen Chamberlain*.

11,475. The amount of Indian representation has been added to by Secretaries of State from time to time in their discretion?—Yes, and on the whole it has tended to increase.

Sir *Austen Chamberlain*.] I found it two, and left at three, if I remember rightly.

Mr. *Cocks*.

11,476. In the next paragraph, seeing that the Services' Sub-Committee of the Round Table Conference recommended that the recruiting and controlling authority in future should be the Government of India and not the Secretary of State, could you state what were the reasons which caused the authors of the White Paper to depart from that conclusion? In other words, what are the objections to making the authority the Governor-General?—There was no unanimous opinion at the Round Table Conference. So far as I remember, there were the three points of view expressed. One, that the Secretary of State should continue to recruit; two, that the Viceroy should recruit; three, that the Federal Government should recruit. There was no kind of unanimity of opinion either in the Conference or in the Committee. The view of the Government in a sentence or two is this: We feel that the two objects that we must keep in mind, are, first of all, a sufficiency of suitable recruits; secondly, as little change as possible during the very difficult years of the initiation of the constitution. Keeping those two objects in mind, we take the view that there would be a risk of not getting the recruits that we require for these very important services if we made a change in the methods of recruitment. Secondly, in order to tide over what must necessarily be a very difficult chapter in the history of the new constitution, namely, the initial years, we propose that no change at all should be made during a period, say, of 5 years. At the end of that five years, there will have to be an inquiry into the whole position, based upon actual experience. I should very much hope, myself, that an inquiry of that kind would not take

the form of a public or semi-public commission upon which acute political attention would be concentrated perhaps for several years, but that it would be an inquiry upon the actual merits of the position based upon the experience of these 5 years; and that in the meanwhile both in the interests of India and in the interests of this country, which has still got many great stakes in India, as few changes as possible should be made during this initial period. That in a few sentences is the general position upon which we have based our proposals as to recruitment.

11,477. Turning to the question of accruing rights, do you hold the view, from what you have said, that in certain circumstances the definition of "accruing rights" given by the law officers of the Crown, and which was quoted by Sir John Kerr in reply to questions 230 and 235 may be inadequate?—I would prefer to take that definition with the comment placed upon it by my predecessor, Lord Peel.

11,478. In exercising his discretion in cases of that sort, will the Secretary of State have to secure the consent of his Advisory Council?—Yes, as he does now.

11,479. Will the Public Service Commission be consulted before a decision is given?—That would be a matter for the discretion of the Secretary of State.

11,480. I was wondering whether the Secretary of State could give the Committee a kind of picture as to what would actually happen in such a case as

this: supposing 20 Commissionerships were abolished and 20 officers of the next seniority applied for the pay and pension rights of the Commissioners, what actually would be the procedure?—The procedure would be what it would be to-day, namely, that the Committee of Council would go into these claims and would make a recommendation.

11,481. Does that mean that each case would be decided upon its merits, or would some definite rule be made which would apply to all similar cases?—I should think each case would be decided on its merits, but I would not like to exclude the possibility of dealing with a class as a class.

11,482. On paragraph 192, when this was brought up before the recess, it was felt, I think, that the exact meaning of that paragraph was somewhat obscure. I was wondering whether the Secretary of State could clear that matter up. Particularly, what exactly is the authority in India competent to pass such an order as that of March 8th, 1926, and secondly, what is the authority in the last line being other than the provincial government?—I think I had better circulate a note explaining exactly what is meant by March 8th and so on. I will do that.

11,483. And the second question about the sanction of such authority, you said yourself on the previous occasion that in practice it meant provincial governments. Could it possibly mean any other authority?—We will cover that point in the note; we will make it quite clear.

*(After a short adjournment.)*

Lord Hutchison of Montrose.

11,484. There are only two questions I would like to ask. One is: In Proposal 189 it is said that there will be an enquiry into the working of the Civil Service on the expiration of five years after the commencement of the Constitution Act. Does that mean the Constitution Act as referring to the Provincial Governments, or to the whole proposals in the White Paper?—(Sir Samuel Hoare.) It means whatever is in the Constitution Act, and certainly it means the whole Constitution.

11,485. But is it not possible that under the Constitution Act if it were passed there might be a period before anything to do with the Federation came into being?—Yes.

11,486. In which case five years would have elapsed before probably any commencement had taken place of a control such as is visualised here at the Centre?—I think that might be so, and I think if there were considerable delay between the two stages in the Constitution that date might have to be modified.

11,487. The other question I would like to ask is, how far is the Commission dealing with the Service there going to take over the present duties of the Inspector-General? I am talking rather in relation to the police. The Commission, I understand, will be empowered to deal with promotions and movements from one place to another. How far will that take over the duties of the Inspector-General?—The Commission would not go into questions of that kind at all. Sir Malcolm will just amplify that answer which I have given. (Sir *Malcolm Hailey*.) It is contemplated that the Public Service Commission would deal only with promotions in the Provincial Service and not with subordinate services.

Lord *Hutchison of Montrose*.] I see. Thank you.

Earl of *Lytton*.

11,488. This morning we had some questions about the Secretary of State's advisers who are to succeed the present Secretary of State's Council. I am not yet quite clear in what respects these new advisers will differ from the Members of the present Council. At the present time the Members of the Council attend regularly in the office they are members of the Committees, and they discuss policy, and also draft the despatches of the Secretary of State. Is it contemplated that the advisers will fulfil all or any of those functions?—(Sir *Samuel Hoare*.) To the extent that I described this morning, remembering, for instance, the difference that will come about when India is responsible for its own finance, and when the safeguards of the future are no longer the safeguards possessed by the India Council, but set out in any scheme of the Constitution. So far as the Services are concerned, the other main field in which the Council act, there I think the position will be very much what it is now.

11,489. It really will be the same procedure as at present except that there will be a withdrawal of certain powers which are now exercised by the Council, and which will not be exercised by the advisers?—There will be this difference of function, and there will be the necessary changes in the number, and so on, but,

generally speaking, we look to this body of advisers (call it a Council if you wish) still to remain the safeguard for the Secretary of State's Services that the Council is at present.

11,490. But you said, quite rightly, this morning that the question of salary would depend largely upon the definition of their duties. I wanted to know whether they would be as the present members of the Council are in regular attendance at the office, and not merely summoned occasionally when their advice is sought?—I think they always would be regular attendants, always remembering their difference of function.

Sir *Austen Chamberlain*.

11,491. It would be a whole time occupation. They would be no more allowed to take outside work, or only to take outside work of a voluntary kind as the present members of the Council are?—Generally speaking, yes. I would prefer not to give a completely rigid answer. Supposing, for instance, with this change in their functions it was found suitable to pay them substantially less salaries, and to expect them to work less hours a week, then I am inclined to think, subject to what other people say, that there might be a greater latitude in allowing them to undertake outside work than there is at present; but, speaking generally, I regard this small body of experts not as a body of people who will just come in and out occasionally to the India Office, but people who really will continue to co-operate with the Secretary of State in the fields for which their functions are appropriate.

Earl of *Lytton*.

11,492. I want to ask one question with regard to the Services. Will the present right of retirement on proportionate pension be continued in the future?—Yes, and for the period of this five years that is contemplated in the White Paper.

11,493. For a period of five years?—For the period of five years. Let me make it clear. People entering in this period of five years, everybody who is already there, for ever, as long as they are in the Service.

11,494. As it is now. But at the present moment those who were in the Service prior to the 1919 reforms were given the right to retire on proportionate pension if, after experience of those reforms, they decided that the conditions had been so altered as to justify them in retiring. That, I suppose, is to continue after this change for a period of five years?—No. It is to continue for those officials as long as they are in the Service. It is to continue for new officials who enter during the period of five years.

11,495. But for those who are in the Service now, after the passing of this Act, is it to continue for the whole of their Service?—Yes.

11,496. Then I would like to ask the Secretary of State whether the declaration which is now required of those people before they can retire will continue to be required in the same terms?—We have contemplated that it should continue.

11,497. I do not want to express my opinions now, but I would just like to put this point in order that the Secretary of State may have it in mind. It was my experience when in India that those who made use of this privilege were not, in fact, those for whom it was intended, namely, the elder men who had spent the greater part of their life under the old system, and who found the new arrangement so uncongenial, that they asked permission to retire; but it was rather the younger men, and, especially, the ablest men in the Service, who were still young enough to be able to get other employment, and who, although not in any way dissatisfied with what was going on, or the changes that had been made, nevertheless felt uncertainty with regard to the future, and, when an opportunity of taking other employment offered itself, they preferred the certainty of that employment to the uncertainty of continuing their service in India. Those people were all required to sign a declaration saying that they were retiring because of dissatisfaction with the reforms. I maintain that, in the first place, that was insincere, and that the requiring of such a declaration is an invitation to people to make an insincere declaration, and, secondly, that the statistics based upon these retirements are erroneous, because I have

often seen it quoted as evidence of the dissatisfaction with the reforms that so many people have retired, rather than work them, whereas I know from my own experience that a large proportion of those who so retired for the reasons I have mentioned, and not at all because they were dissatisfied with the reforms. I do not want to ask you the question, but I would just like to mention that experience of mine in order that when the time comes the question of continuing this declaration or not may be considered?—I will certainly take note of what Lord Lytton has said, and I am much obliged to him for having raised the point. I think the best course would be for me to consult the Government of India and some of the senior officials about it, and see what their view is.

11,498. Thank you?—But certainly upon what he has said there seems to be a good case to be made either for not having a declaration of this kind, or for having it in a somewhat different form.

*Sir Austen Chamberlain.*

11,499. Secretary of State, I find it difficult to get any clear picture in my mind of the exact position which the Public Service Commissions are to claim under the new scheme. Are they to be to the Government of India and Provincial Governments what the Civil Service Commission in London is to the Government here, or are they to have, on the one hand, greater powers and, on the other hand, less powers?—I suppose here it might be said the Civil Service Commission is almost entirely an examining body. Is not that so? I am not very familiar with the work of the Civil Service Commission.

11,500. I think so. On the other hand, as a Secretary of State I could not appoint anybody to my office except with a certificate from the Civil Service Commission, in the first instance. Once he was in my office I could promote him at my own discretion, but I could not bring him into my office except on the certificate of the Civil Service Commission that he had passed the examination that was required?—Except by laying an Order in the House under an Order in Council. I remember now the position. I would imagine that the Public Service Commission in India

would have somewhat wider powers, and would be something more than an examining body; for instance, that it should be consulted upon certain disciplinary questions, and so on. I am inclined to think after the discussion of this morning, and the suggestions that have been made, that I had better circulate a note as to exactly what the two Public Service Commissions in India actually do now, and what are the changes that we propose there should be for the new Public Service Commissions under the White Paper, and I will take into account the differences between our conception of the Indian Commissions, and the actual procedure of the Civil Service Commission here. I do not know whether that would meet Sir Austen's view. I think perhaps that would be the more convenient way of doing it.

11,501. I think so, and I am much obliged to the Secretary of State. May I ask him to bear in mind in preparing his paper any circumstances in which he proposes that the Indian Commission should have less authority than our own Civil Service Commission?—Yes, certainly.

11,502. That arises from some answers that were given earlier in the day?—Yes.

Marquess of Salisbury.

11,503. I venture to hope that perhaps the Secretary of State might consider closely a question that was put to him just now by Lord Hutchison, as to how the work of these Commissions would fit in with the ordinary work of the Inspector-General of Police as to transfer and appointment and promotion?—Yes.

11,504. I do not see on the face of it what the proper answer is to that. They seem to me to overlap rather, and I have no doubt that could be thought out?—We will make points of that kind as clear as we can.

Marquess of Salisbury.] Thank you.

Sir Austen Chamberlain.

11,505. Now, Secretary of State, may I refer you to Proposal 190: Does that merely register or repeat the present practice, or does that make any innovation?—It repeats the present position to this effect. This is what actually happens now, but it happens under

the delegation powers of the Government of India Act. Our proposal is that in future the same state of affairs should continue, but it should continue under direct statutory authority.

11,506. But the authority by which the appointing authority acts will be statutory instead of the Secretary of State?—Instead of by delegation rules made by the Secretary of State under the Government of India Act.

11,507. But the number of appointments covered, or the services to which this applies, will not be altered. With the autonomy of Provincial Governments will not their power be widely extended?—May Sir Findlater deal with this? (Sir Findlater Stewart.) Let me take a particular case: The subject of irrigation under the White Paper would become a Provincial subject under the control of Provincial Ministers. At present, the Irrigation Department is manned in its upper ranges by an All-India Service. The implication of this White Paper is that the irrigation recruitment in the future will be to a Provincial Service, and in that sense and to that extent Proposal 190 will extend the range of services over which the Provincial Government has power of recruiting and controlling. Of course, that is in the upward direction. There is no question that in the downward direction they can create new services for new purposes or within their own Provincial field, but to the extent that this White Paper transfers, so to speak, services which have hitherto been All-India Services—to that extent Proposal 190 would give the Provincial Government control over new services.

11,508. That is how I understood it, Secretary of State. Statements have been made in evidence before us that since certain services were transferred to the Provincial Government, no Europeans have been recruited for them. Is that true in the case of the existing transferred services?—(Sir Malcolm Hailey.) That is substantially the case. If you take, for instance, the Education Department, the number of Europeans that have been appointed to the Provincial Education Departments are very few indeed. The tendency has been to substitute Indian recruitment almost entirely.

Marquess of Salisbury.

11,509. And the Medical Department too?—No, Sir. The Indian Medical Service remains untouched so far. I am referring to cases such as the Public Works, roads and buildings, and the Education Department.

11,510. Forests?—No, Sir; the Department of Forests is transferred only in two Provinces. Agriculture and Veterinary and Departments of that kind. The result certainly has been that there has been very little new European recruitment in them and they have become very largely Indianised. In the Education Department of the United Provinces, for instance, there are now only four or five European officers left and they are not being replaced by European officers.

Sir Austen Chamberlain.

11,511. Now, Secretary of State, I want to ask you a question of policy, having got the facts. You are going to transfer other services of such importance, for instance, as irrigation, which Sir Malcolm has just mentioned. I think it is common ground to everybody who has considered this that the scheme which we are considering is a great experiment. Is it not in your opinion of the first importance that in the establishment of this new experiment the kind of wisdom and the experience accumulated under the old system should be available to the new authority, and would you be satisfied to make this large additional transfer of services without taking any security that a proportion of Europeans should continue to be recruited for them?—(Sir Samuel Hoare.) The difficulty with some of the services is the difficulty that arises from the state of affairs just described by Sir Malcolm Hailey, that in some of these services there are very few Europeans already left.

11,512. Those are the services already transferred, as I understand it?—(Sir Malcolm Hailey.) Yes. (Sir Samuel Hoare.) Yes.

11,513. For better or worse that is done?—As to the services to be transferred, there is, of course, the fact that for some years to come there will be senior European officials, I suppose, in all of them. (Sir Malcolm Hailey.) Yes,

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particularly the irrigation and forests. (Sir Samuel Hoare.) Particularly in the Irrigation Department. That to some extent meets the obvious difficulties of the early years.

11,514. How far would that be affected by the provision of Proposal 189, that at the expiration of five years there is to be a statutory inquiry into the question of future recruitment?—The inquiry we contemplate would be a general inquiry, competent to consider questions of that kind and any other question but I think I should be right in saying that for the next five years at any rate, in a very important Department like the Irrigation Department, there will be this nucleus of senior British officials.

11,515. Does not it strike you as requiring some explanation, that European recruitment has practically ceased as soon as the transfer was effected?—I think we have frankly got to accept the fact that Indianisation has taken place and is taking place over a great field of the administration in India.

Lord Rankeillour.

11,516. Might I ask: Would none of the civil posts in, say, the Irrigation Department come under the schedule that is contemplated that we talked about this morning?—No.

Mr. M. R. Jayaker.

11,517. May I ask the Secretary of State whether, since this process of Indianisation began by the employment of Indians more and more in the transferred Departments, they have received any complaint that the standard of efficiency or competence has gone down?—I could not say that I have received any considered comments one way or the other.

Sir Austen Chamberlain.

11,518. Secretary of State, I do not want to press you if you are unwilling to give an answer, but do you think that the standard in the Education Department or Departments is as high now as it was before the transfer, and that they have suffered nothing from the failure to recruit any Europeans since the transfer?—I think these big changes are bound to have some bad effects. I think that is inherent in any



changes of this kind, but I suppose we accepted the possibility of such effects when now many years ago we embarked upon a programme of Indianisation. Here in these White Paper proposals we are making substantially no new proposal at all about the services; we are going on with the Lee percentages, and I think the criticism that Sir Austen is suggesting, if it is a valid criticism, is really a criticism much more against what has been happening for 20 years than what is going to happen in the next 5 years.

11,519. That may be so, but if what has happened in the last 20 years has had bad effects, the Secretary of State perhaps will agree that that is something that we ought to take into consideration now in an attempt to guard against or to mitigate the larger reforms when we are making them?—I could not myself go so far as to say the effects have been bad; one has got to take many things together. You have got to take into account the reactions upon public opinion generally, and in saying that I am not stating my own isolated opinion, but I suppose I am stating very much what was in the mind of the Simon Commission. The Commission (Major Cadogan will correct me if I am wrong) must have heard a good deal of evidence about all these questions, and they did recommend the transfer of these services without the kind of additional safeguards that perhaps are in Sir Austen's mind.

Earl of Lytton.

11,520. Is it not a fact that this change that Sir Malcolm Hailey referred to which has come about in recruitment since the services have been transferred have not really yet had much effect one way or the other upon the administration, because it only means that as vacancies have occurred in the last 10 years at the bottom, Indians have come in, or where Europeans have created a vacancy, they have not been filled by Indians; but would it not be true to say that you cannot yet give a definite answer one way or the other with regard to the effect on the services of recruitment during the last five or 10 years?—(Sir Malcolm Hailey.) I think that most of us would hesitate to give an answer for the reason which Lord Lytton has

indicated. All the senior members of most of these services are still Europeans, and carry on the same traditions of the service as before. We shall not be able to say what has been the full effect on the administration of the Indianisation of the services until the senior posts are also held by Indians. When that time comes we shall be able perhaps to make some sort of judgment; I do not think we can do so at present.

Lieut.-Colonel Sir H. Gidney.

11,521. Is it not a fact that recruitment in the Education Department has ceased for many years entirely?—Not entirely; there have been some isolated appointments for inspectorships and the like, but for practical purposes one may say that the European element is disappearing from the upper branches of the service.

11,522. And you are replacing them by the provincial element?—That is so.

11,523. As regards the Forest Department, is it not a fact that there has been no competitive examination in England and it has only taken place in India for many years?—The Forest Department is still manned by an All-India service except in two provinces. It does happen that for various reasons there has been little fresh recruitment, but that is not on account of the transfer of the department, but because for various reasons, such as reduction of work, the cadre has not needed refilling.

11,524. But there has been no recruitment from England for many years?—Very little recruitment, two or three posts only, I think.

11,525. Has the Forest Department, in your opinion, in the province that you administered, in any way suffered?—It has been carried on by the same hands as before with a somewhat smaller service, so that it would be impossible to make a judgment.

Dr. B. R. Ambedkar.

11,526. Might I intervene just for a moment to point out that the result to which Sir Malcolm Hailey has referred, namely, the denudation of the services of the local element, as soon as they are transferred to ministerial control is largely due to the fact that this transfer has also been accompanied by a reduc-

tion in the scale of salary. When a service has become provincialised the Minister has adopted a lower scale of salary than was obtainable formerly, and, consequently, the smaller scale of salary has not attracted European candidates?—Yes; they have substituted, in other words, Imperial for provincial services.

Dr. B. R. Ambedkar.] It is the salary that has made the difference—not the transfer.

Lord Eustace Percy.

11,527. They have recruited in some years on special salaries in one or two instances?—In some instances, yes.

Marquess of Salisbury.

11,528. But you do not doubt, do you, that if the White Paper passes in its present form, all the Europeans will disappear gradually? As the vacancies come they would all be filled by Indians?—I should expect to see just the same change in the departments still remaining for transfer which I might take as typical, such as the Irrigation and Forests Departments, as in the departments we have already transferred, namely, a very rapid Indianisation that would leave us with still a very considerable number of Europeans in the service, but all the fresh recruits would, I think, be on a provincial service basis and be Indians.

11,529. And you say that you cannot judge what the effect on the efficiency of the service will be until the thing has thoroughly worked itself out. Was not that what you said?—Yes, and it would be, I think, unjust from any point of view to try to make a final judgment until you have seen more fully the effect of Indianisation as represented in the filling by Indians of the supervising and administrative posts at the top of the service.

Marquess of Salisbury.] I do not think one ought to pronounce a final judgment, but if there is a very considerable risk of deterioration in these important services, do you not think that some precaution ought to be taken?

Sir Austen Chamberlain.] I put the same question to the Secretary of State; it is really my question.

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Marquess of Salisbury.

11,530. I beg your pardon?—Certain local governments have, of course, pressed strongly for the retention of the European element in one service in particular—the Irrigation Service; the Punjab Government pressed for that strongly. That I think has come out in evidence before the Committee already.

Lord Rankeillour.

11,531. It really amounts to a question of whether you should extend the schedule beyond its present limits?—If I may say so, it rather comes to a question whether you should transfer the service or not.

Sir Austen Chamberlain.

11,532. Secretary of State, I feel there is a little difficulty, because there are questions of fact about which Sir Malcolm has been good enough to inform us. There is also a great question of policy, and I feel that on the question of policy I ought to address myself to the Secretary of State. We are making a vast change of immense consequence to the future of the peoples of India. We in this country are divesting ourselves of a responsibility which has hitherto rested directly upon us. Ought we not, in this great change, to do what we can to secure continuity of policy and a sufficiency of those influences which have built up and maintained the unblemished reputation of the Indian Civil Service?—(Sir Samuel Hoare.) It is not very easy to deal with a big question of policy of that kind by question and answer. It is not that I am not ready to give an answer at once, but it is for this reason: A question of this kind raises issues other than service issue. For instance, one of the bases of our proposals is the proposal of provincial autonomy—the very foundation, in fact, of our scheme. One has got to take into account the reactions upon provincial autonomy and upon public opinion in the provinces of restricting to this extent or to that extent the field of provincial administration. Sir Austen's question, although it is specially directed to the service side of the question, really does affect the whole of that problem. Let me give him an instance: By far the

most important department of those that we are transferring is the Irrigation Department; indeed the only two big departments that we are now transferring, that have not already been transferred, are Irrigation and Forests. Of those two, the Irrigation Department, I should think, was (politically, at any rate) the more important. Suppose, now, one did not transfer the Irrigation Department or suppose that one tied it up with a number of restrictions that might easily be defensible from one point of view, but might have the result of very much restricting the field of provincial autonomy. Actually, in the Punjab, which is the Province, I suppose, of all others, where irrigation, chiefly matters, it would in practice mean, taking I suppose more than one-third of the whole province out of the field of provincial autonomy. The irrigated tracts in the Punjab (Sir Malcolm will correct me if I am wrong) I think, are more than one-third of the whole province. (Sir Malcolm Hailey.) Yes, about one-third. (Sir Samuel Hoare.) Sir Austen will therefore see that there is this great risk of making provincial autonomy insignificant and ineffective if you try to tie these services up with many restrictions; still more if you do not transfer a big department of this kind that really covers a great deal of the day to day life of the province. I suppose it was those considerations that prompted the Statutory Commission to make the recommendations. We have followed almost exactly the recommendations of the Simon Commission. I fully realise the difficulties and the dangers that there may be in changes of this kind, but taking, as I say, one political aspect of the problem with another, we have thought that this on the whole was the wiser and the safer course. I would not like to dogmatise, and I would like the views of my colleagues, both British and Indian, upon it, but that is our general position.

Sir Austen Chamberlain.

11,533. My Lord Chairman, I will not ask the Secretary of State any further questions upon that matter, but will reserve them for the time when we come to our discussions, when we can develop it; but perhaps I might be allowed to

say that I have been endeavouring to form an opinion and not endeavouring to express an opinion not already formed in the questions which I have put to him or by the answers which he has given, and I certainly make no suggestion and have no intention of suggesting that a subject like irrigation should not be transferred; it is merely whether some additional condition of transfer should be imposed. I will leave it at that. I want to go for a moment to the Statutory Commission proposed to be appointed five years from the commencement of the Constitution Act by section 183. The Secretary of State has already had his attention called by Lord Hutchison to the fact that different parts of the constitution must, according to the scheme which he has laid before us and the views he has expressed, come into operation at different times. How long the delay will be before the whole constitution as contemplated by the White Paper is in fact operative, the Secretary of State has himself repeatedly said that he could not predict?—Yes.

11,534. Accordingly, to take the extreme case which is put by Lord Hutchison, if you fix in the Act a date of five years from the passing of the Act for the creation of this Statutory Commission, it might actually come into existence before the constitution itself—before the constitution itself was in full operation?—Yes.

11,535. Is there any doubt about that?—No, none. I was not suggesting any doubt.

11,536. Then is it not unwise to fix in the Act that this Statutory Commission shall be created in five years when you do not know whether at that period the material which the Statutory Commission is to investigate will be in existence?—I think there is a great deal to be said against fixing a date. First of all, there is the difficulty explained by Lord Hutchison and Sir Austen Chamberlain, namely, that here we are putting in a specific date when we do not exactly know the date of the conditions within which the whole constitution will come into operation. Moreover, if you put a date into an Act of Parliament, you do then have, I am afraid, the kind of agitation that started over the Statutory Commission, long before

the period of 10 years, contemplated in the 1919 Act, had elapsed. Those are very strong arguments against putting in a date of this kind. On the other hand there is this fact that cannot be ignored, that public opinion in India, both central and provincial, is very sensitive upon all these issues connected with the services. To take, for instance, provincial opinion, provincial opinion is very strong upon provincial autonomy being made effective, and it is very suspicious of any kind of diarchy in which the real seat of power is not in the hands of the provincial government; that being so, it did seem to us that there should be some kind of reassurance to public opinion in India, both provincial and central, that there should be an inquiry based upon actual experience at a not very distant date. If no date is put in, I am afraid the general opinion in India would be that this is an arrangement fixed for ever; the anomalies that are bound to exist in a system of this kind are going on for ever; there is never going to be a change; and I think you would see that Indian public opinion would resent the absence of a date of this kind.

11,537. Can I carry the Secretary of State thus far with me, that it would be useless to have the Statutory Inquiry until sufficient experience has been gained of the working of the new system to afford it a basis for a report?—Certainly.

11,538. That it is at least possible that, say, in five years from the passing of the Act there will be but one or two years' experience of the working of the new system at the centre?—I suppose it is possible. I would not like to be drawn into an opinion as to whether it is likely to happen or not.

Mr. Zafulla Khan.

11,539. I do not want to interrupt, Sir Austen, but I merely want to know the meaning of the expression "the commencement of the operation of the Act." Does it mean the enforcement of the Act? The expression used is "the commencement of the Act"?—Probably the same procedure would be adopted as was adopted after 1919, namely, that dates were fixed for the commencement of various Parts of the Act.

Marquess of Reading.

11,540. That is when the Act comes into operation?—Yes, and in the case of the 1919 Act when certain Parts of the Act came into operation.

Sir Austen Chamberlain.

11,541. This does not mean the date at which the last Part of the Act to be brought into operation begins?—No.

11,542. But it means the date at which the Act first begins to operate, does it not?—Yes.

Archbishop of Canterbury.

11,543. And the whole constitution, including the Federal constitution?—No, it does not go so far as to mean that.

Sir Austen Chamberlain.

11,544. At any rate, for my purposes, it is quite sufficient that obviously it does not mean that the Commission will necessarily have five years' experience by which to judge the new system?—As at present drafted, I do not think it does.

11,545. Do you think any period less than five years will afford sufficient experience for a report of this kind of such a commission to have real value?—I have always taken the view that anything short of five years would be inadequate.

11,546. Now may I just remind the Secretary of State of Sir Malcolm Hailey's observation a little time ago, that you would not really be able to express an opinion on the effects of transfer and the cessation of European recruitment until the Indians had risen to such seniority in the service as to be occupying the highest posts, the real controlling posts, in a sense, and again, with those preliminaries, do you not think it is possible to insert in an Act five years after the commencement of the Act that this inquiry shall be held when it follows from those things that the material upon which alone sound judgment can be formed, will not be available in that time?—This inquiry was to be mainly directed to the future recruitment of the Secretary of State's services, and what we had in mind was to obtain the experience during the next five years as to whether a change in that recruitment would be necessary or not.

11,547. What do you expect to have available five years hence that you have not now?—A great deal, I think. I think we shall have the five years' experience of the autonomous governments in the provinces. We shall see how things are going; we shall see what is the state of public opinion; we shall see what is the state of law and order. My own view would be that when the immediate excitement of the initiation of the constitution has blown over, both sides will look much more calmly at these problems than they could now. I would have said that in about five years time we should have quite a considerable amount of data for the specific point for which the Inquiry is needed, namely, what is the best way of recruiting officials for the Secretary of State's services in the future.

Mr. M. R. Jayaker.

11,548. Is the Secretary of State aware that this clause has been taken by many Indian publicists to be a compromise between the Indian demands that British recruitment should cease at once, and the opinion held by publicists here that it should go on *ad infinitum*?—Yes.

Sir Austen Chamberlain.

11,549. Is that the purpose of the clause?—No; the purpose of the clause is not in the least intended simply to be a paper compromise, but it is a clause intended in the interests of security all round, both Indian and British, to give us the data upon which we can come to a decision in  $x$  years time. I do not say there is anything verbally inspired about five years; that seemed to us to be about the time, after a good deal of consultation with prominent governments and Government officials both in India and here.

11,550. This is my last question; would the Secretary of State reconsider the opinion that five years is a reasonable time in the light of what has been put to him to-day, and particularly of the fact that five years apparently means five years from the time when the Act or some portion of it begins to operate, and not merely five years from the time when the whole system is in being?—I think one can easily meet Sir Austen's

second point by giving Parliament or the Secretary of State power to alter the date in the light of the coming into operation of a particular Part of the Act. I think that is a technical point that could be met in a technical way of that kind. If Sir Austen means in the former part of his question that it would be safer to put no date at all into the Act, then I would ask him to take into account the wider political considerations that I have alluded to this afternoon and the intensity of the feeling in India upon questions of this kind, all pointing to the wisdom of putting in a date of some kind.

11,551. I only think that those considerations cut both ways, and I would ask the Secretary of State to have this in mind: In making this great change and this great experiment, if you can make the old slide gradually and without friction into the new, I think you do a great deal for the successful work of the new, but if, even at the start, you say that the provisions which you have set out are to be dug up and re-examined in five years time and the whole thing is again to be in the melting pot, that you keep all these questions simmering and boiling for the whole of those five years?—That is perfectly true and obviously we should all pay great attention to what Sir Austen says upon a question of this kind. May I, however, with great deference, ask him to keep this kind of detail in his mind: It is not solely a question of five years from the Indian point of view; it is a question of many more years. To put it into a concrete form, a European official who is enlisted under these conditions in the next period of five years, will be in India serving under those conditions, we will say, for 40 years, 30 years anyhow; and it is that kind of consideration that is very much in the mind, I believe, of some of my Indian friends, and if Sir Austen would give his very acute mind to this kind of question that I have raised I will certainly give my much less acute mind to the points he has raised, and I hope my Indian friends will do the same.

Sir Austen Chamberlain.] A very reasonable offer couched in very flattering terms. With that I conclude my examination.

Sir Hubert Carr.

11,552. On the question of the effect upon the recruits in the next five years : It seems to me that if a man joining during the next five years knows definitely there is going to be an inquiry into the whole terms of the service five years hence, it is very likely that you will not get the same kind of recruit that you have been getting in the past. The normal expectation must be, I take it, that the Secretary of State's control will relinquish in a degree and it seems to me questionable whether the recruit that you are wishful of securing to-day will be the same class if he knows there is going to be an inquiry five years hence. or if he knew, on the other hand, that he is joining a service where conditions will continue until Parliament might decide that it was necessary to hold an inquiry at some future unknown date ?—That is very much the position that is taken up in the White Paper. The last word is with Parliament. But Parliament must come to its decision after some inquiry. Parliament could not come to a decision of this kind—very technical and very complicated—simply *in vacuo*. There is this further point that Sir Hubert should keep in mind, that whatever may be the effects in five, 10, or 15 years time, the officials' rights under which he came into the service are guaranteed to him.

Sir Hubert Carr.] Yes ; but that was not quite the point I tried to make. It was that if Parliament had definitely to inquire into it, in five years hence then these changes which are not likely to be in favour of the men recruited to-day will come into being definitely five years hence, whereas, if he comes into the service and knows that nothing will be done until Parliament, it may be, 15 or 20 years hence, says, "The Constitution is now working so well and satisfactorily that we can relinquish the safeguards which we held"—

Sir Hari Singh Gour.] It may be 12 months hence.

Sir Hubert Carr.] I think that is unlikely.

Sir Hari Singh Gour.

11,553. That depends ?—These are all questions upon which I should like to

hear the views of the Committee and of the Indian Delegates. My own view is that it would be wise to put in a date.

Marquess of Reading.] On what Sir Hubert Carr says, assuming a man joins the Service within the first year or the second year of the operation of the Act, whatever happens after that Inquiry will not affect his rights in any way.

Sir Hari Singh Gour.] They are made.

Sir Hubert Carr.

11,554. I have heard it said that something may happen like in Egypt, where the Civil Servants may be told on that analogy, "Now we are going to transfer recruitment to the Services to the Federal Government and you must either agree to be transferred or we will give you compensation." That would interfere with the recruits in the next five years ?—I do not think that has anything to do with it. The men who come in will have their rights guaranteed throughout the whole of their service.

Sir Austen Chamberlain.

11,555. And throughout the whole of their service they will be under the terms on which they enter ?—Yes.

Lord Eustace Percy.

11,556. If I may put the point in another form, I would ask the Secretary of State to bear in mind that five years or anything like the order of five years is about the worst period you can take from the point of view of maintaining recruitment in this country in these days because people do try to determine on their future career about five years before they take the Indian Civil Service examination, and if they know that just about the time they were going up for it the new inquiry is to take place, I think you may very well fall hopelessly between two stools ?—I will take a point like that into account, certainly. I can only say it is very difficult to dogmatise upon what conditions are going to produce good recruits and what conditions are not going to produce good recruits. I have had analysed for me more than once the recruitment figures of recent years with the All-India Services. It is very difficult to make any generalisation as to what is going to happen and what is not going to happen.

11,557. The lack of careers in this country may have a very great influence on it?—All kinds of considerations of that sort enter into it.

*Archbishop of Canterbury.*

11,558. Is Proposal 189, either in its essence or in the prescription of five years the result of any recommendations or decisions of the Round Table Conference?—No, I do not think the point was ever considered at the Round Table Conference. It is the result, however, of a good deal of consultation between the Government of India and ourselves.

*Mr. M. R. Jayaker.*

11,559. In this clause you are trying to meet, as far as you can, the majority recommendations of the Services Committee, that the recruiting shall stop and in future the recruiting and controlling authority should be the Government of India?—Yes.

*Mr. N. M. Joshi.*

11,560. May I ask one question about the services which are already transferred and provincialised?—Yes.

11,561. You were asked questions about the non-recruitment of Europeans for these transferred services?—Yes.

11,562. May I ask as a matter of information whether of the new Indian recruits who are usurping the place of the Britishers, most of them possess the British University qualifications which the British recruits used to possess?—In the transferred subjects in the Provinces?

11,563. Yes?—I could not answer that.

11,564. I am speaking of the Education Department, for instance. Do not they possess the same British University qualifications which the European recruits used to possess?—(Sir *Malcolm Hailey*.) Many of them possess quite good British University qualifications. Some of them possess only Indian University qualifications.

11,565. May I go further and ask whether the Government of India have considered this, that the new Indian recruits possess greater British University qualifications than the old British recruits used to possess? You can get an

Indian with a first class British degree for the salary that is offered, whereas you cannot get a British candidate with a third class degree, with the result that you are getting a better class of recruit than you used to get formerly?—I would not like to generalise further than to say that I do know of very many of the Indian recruits who have taken very high degrees with honours in the English Universities. I am not able to say how far, as a whole, they compare.

*Mr. Zafarulla Khan.*

11,566. May I put this to you, that having regard to the fact that the services that have been transferred have also been provincialised, and consequently the salary and other conditions are not now the same, the choice really now, with that salary and with those conditions, is between an indifferent European and a good Indian? A good Indian is available under those terms and a good European is not; and therefore the decision is between a good Indian and an indifferent European, and the Governments make that choice?—The placing of the services on that basis has undoubtedly restricted the choice of Europeans.

*Mr. N. M. Joshi.*

11,567. With regard to the advisers of the Secretary of State for India, the body of advisers will have definite power as regards the conditions of the European services?—(Sir *Samuel Hoare*.) You mean the All-India services?

11,568. The All-India services. Does it not really mean that the conditions of the All-India services cannot be changed without the consent of the services themselves, if we take into consideration that also another condition laid down is that out of the three advisers two shall belong to the services? Does not it really mean that the conditions of the All-India Services will be determined by members belonging to the Services?—The first answer to Mr. Joshi is that we do not make the restriction that he has just suggested.

11,569. It may happen?—It may happen, and it may not happen.

11,570. I quite agree that, legally speaking, it may not happen, but it is

quite possible that these two members will belong to the All-India Services?—It is possible that they may have belonged to the All-India Services, but they will be retired. My first answer to Mr. Joshi is that the restriction is not imposed which he has just suggested. My second answer is that even if two of the advisers were ex-Indian Civil Servants, it by no means follows that they would take a partisan view of questions of this kind. I can tell Mr. Joshi that my own experience has been that my ex-civilian members of my Council look at these questions of personal grievance and status and so on that do come to my office with most meticulous impartiality, and I do not at all believe that the scales will be weighted one way or the other were this arrangement to take effect.

Mr. M. R. Jayaker.

11,571. The third alternative possible is that one of the two (two at least must have held office, and so on) may be an Indian. That alternative is open?—Both of them might be. There is nothing to stop one or both.

Mr. N. M. Joshi.

11,572. I did not intend to make any suggestion that your future advisers will take a partial view, but I wanted to point out the constitutional position. Two out of the three members will belong to the Services, and they will have a definite veto upon the action of the Secretary of State so that they really determine the conditions of service for the All-India Services. That is the constitutional position?—I dare say in theory it may be so. The practice is very far removed though from that description.

Lieut.-Colonel Sir H. Gidney.

11,573. Secretary of State, in your opinion, do you think that the present covenant entered into between the Secretary of State and the Civil Service and the other allied Services is a satisfactory one?—There is not any covenant in the strict sense of the term.

11,574. Is not there some agreement that they sign with the Secretary of State?—Sir Malcolm will correct me if I am wrong, but all I remember of it is that the official gives certain under-

takings, for instance, that he will not acquire and hold land in India; survivals of the 18th century, and so on. (Sir Malcolm Hailey.) That is so. We sign a covenant which binds us to do a large number of things. It binds the Secretary of State to do little or nothing.

11,575. That is exactly my reason for asking that question, Sir Samuel. Do you think that covenant or agreement should be modified so as to be made more explicit?—(Sir Samuel Hoare.) I have never attached very much importance to this covenant. I have regarded it as a survival of the 18th century, of historical rather than of practical interest.

11,576. Then you do not think it requires any modification or alteration?—I should just let it be as a historical relic.

11,577. Regarding paragraph 183 of the White Paper where you specifically mention three Departments: you have already commented on the absence of the Indian Medical Service. Do I understand that there is any likelihood, resulting from the negotiations taking place to-day between you and the Government of India, that the Indian Medical Service were likely to escape the Secretary of State's protection?—No, certainly not. Even if they wished they could not escape it.

11,578. But there are negotiations going on, and I think public opinion in India is very strong that with regard to the Medical Service it should be under the control of the Government of India, and I think there is a strong feeling that there must have been some reason why it was excluded from Proposal 183?—No, there is no more reason than that. This is one of the innumerable administrative questions we have been discussing for some time, and I should hope in the course of quite a few days to be able to make a statement about it; anyhow in the course of the next few weeks.

11,579. With regard to the pensions we were talking about a little while ago, when you said the assurance was given by the Secretary of State for India, does that refer to all pensions, or only the pensions that relate to the higher services?—It was an answer referring to the All-India Services.



11,580. Then is there no guarantee or implied guarantee, or Secretary of State's responsibility, for the stability of the pensions of the gazetted officers and the other subordinate officers?—It may be my slowness, but would Sir Henry just put that question again. Is his question: Does this moral obligation extend over pensions other than the Secretary of State's Services pensions?

11,581. Yes?—The answer is Yes.

11,582. Secretary of State, I think most people in the Service have expressed a very great doubt, or a feeling of insecurity, regarding the pensions. When Sir Austen asked you a question about this you did not seem to think that it was necessary to incorporate it in the Act. Would it not clear away all this doubt if such a clause were incorporated in the Act?—What sort of clause?

11,583. A clause guaranteeing the pensions of all three Services?—No. I thought my answers this morning quite clearly stated my view. I have nothing to add to them. I think it is unnecessary. Secondly, I think it would be impossible to isolate this obligation from other obligations of the same kind, and, thirdly, I think it would be politically unwise because it would be suggesting both to Indian opinion and to British opinion that the Indian Governments were not going to meet their obligations.

11,584. I refer you to paragraphs 190 and 191 which I interpret as being sequential. I may be wrong. If they are, paragraph 190 states that the Federal and Provincial Governments control all appointments other than those by the Crown and the Secretary of State in Council. Paragraph 191 says they will enjoy all service rights existing at that date. Do I understand you to mean by those two paragraphs that those Departments which are not appointed by the Crown or the Secretary of State would have their vested and accruing interests protected? I am referring to the large bulk of Government servants in India who do not come under the category set out in Proposal 183?—You will find their rights set out in Part II of Appendix 7.

11,585. Do they cover all these Departments, Sir Samuel?—I think they do, but I will confirm my answer by looking in detail into it. I think they do.

11,586. You will forgive me pressing this point?—Certainly.

11,587. The reason why I return to it again just shortly is because their vested and accruing rights are being openly violated to-day. In the battle between efficiency and economy in India all those who have entered their Services on certain terms of promotion and pay are now being forced to accept lower rates of pay and lower status so their vested and accruing rights are not being respected at all by the Local Government or by the Government of India. I would like the Secretary of State to make a note of that if he would kindly do so?—Certainly.

11,588. There is one more question I want to ask, and that is with regard to the transfer of the Forest and Irrigation Department of Engineers. Secretary of State, you were pressed with certain questions on this matter as to the wisdom or the unwisdom of the transfer of these Departments. I will not touch on those, but might I suggest for your consideration that, although these Departments must be transferred if Provincial autonomy is not to be a farce, would it not be possible to incorporate in this transfer that a certain percentage of the appointments to these two Departments should be Europeans?—That is going back once again to Sir Austen's questions. I would prefer to leave it to-day at the point at which I left it in my answer to him. We can revert to the question when we come to our discussions later, but I have not really anything to add to what I said to him earlier in the afternoon.

11,589. Again, is there anything in the conditions relating to those two Services that a percentage must be Europeans?—I suppose the Lee percentage would cover them.

11,590. Could not this percentage continue to cover them up to a certain period?—I think that is the kind of point we ought to consider. In answer to an earlier question I said they were covered by the Lee percentage. Sir Henry said "Could not that continue

for a period?" I said in answer "That was a point we must take into account."

*Sir Abdur Rahim.*

11,591. The Lee Commission's recommendation was regarding recruitment in Britain or India, not as regards the race of the candidate. Is not that so?—No; I think it went farther than that.

11,592. Regarding Civil servants, for instance, it was only a question of recruitment either in Britain or in India?—No, it made definite percentages between Indians on the one hand, and Britons, on the other.

*Sir Austen Chamberlain.*

11,593. And there is nothing in the White Paper to maintain those percentages?—No, but it is our intention to maintain them in our own Services.

11,594. Did not the Lee Commission's percentage cover, for instance, the Irrigation Branch?—Yes, and so long as the Departments remain All-India manned Departments we maintain the percentages. I agree when a Department is transferred—

11,595. You are proposing to transfer Irrigation, are you not?—Yes.

11,596. And make it a Provincial Service?—Yes.

11,597. Do you transfer the obligation of percentages recommended by the Lee Report when you transfer the right of appointment?—That is just the point Mr. Zafrulla Khan raised, and I said it was a point we ought to consider. Perhaps I had not given it full enough consideration before. I will consider it.

*Sir Austen Chamberlain.*] It was intended to be covered by the questions I put earlier.

*Mr. Zafrulla Khan.*

11,598. As soon as those services become provincialised the question must arise whether on the terms the provinces offer you will be able to get any suitable Europeans?—Yes.

*Mr. M. R. Jayaker.*

11,599. The scheme you have presented in the White Paper in the sections relating to the Services is a very wide departure from the scheme which was re-

commended by the Services Committee?—The Services Committee, as I said earlier in our discussions to-day, was not unanimous upon any of the issues.

11,600. I mean the majority of the Services Committee?—Yes. It should, however, he remembered that I think we all agreed during the Round Table Conferences that it was not a question of majorities and minorities. It was much more a question of collecting the voices of groups, and certainly then there were these two or three different opinions expressed and fairly strongly held by this or that group in the Committee.

11,601. I merely want to know the fact, not that I am commenting on the departure?—No.

11,602. I want to ask you this: The gist of the suggestion made by the Services Committee was that a line should be drawn between the recruits up to the passing of the Constitution Act, and those who were recruited after, and that those who were recruited before the Constitution Act should be amply safeguarded in respect of all their rights and privileges by the Secretary of State, and those who were recruited after should be transferred to the Governor General acting at his own discretion. That was the gist of the recommendation, and I am asking you whether you do not think that that would be a much simpler arrangement to work consistently with the rights of those who have come into the Service previous to the Constitution Act?—I would say that that was a view held by a considerable number of the members of the Committee, but I would not go so far as to say that it was held by a majority; nor would I go so far as to say that other views were not very strongly expressed by other groups in the Committee, taking the alternative—that Mr. Jayaker has just put before the Committee. Even that alternative took two forms, one of its forms being that recruitment should be by the Viceroy; the other form that that took was that recruitment should be by the Viceroy on the advice of the Ministers, namely, by the Federal Government. There was not even unanimity in the group upon those two points, but setting aside what actually was the grouping in the Committee itself, I would say to Mr. Jayaker that the

reasons that have made us make these proposals are, we believe, in the interests principally of India itself. We believe that the fewer changes we can make during the first chapter of the constitution the safer from every point of view ; we believe also that it would be starting the constitution in very dangerous and unfortunate conditions if, in the early stages, recruitment for these services fell seriously off. Now rightly or wrongly, services and those connected with the services—and by that I mean those connected with the places where they are recruited, universities, public schools and so on, are very conservative in their views and they are very suspicious of changes being made in the conditions of service. We came to the view that that being so, it was much wiser not to excite suspicions that we believe are really unnecessary and are going to prove as we hope to be ill-founded, but to keep the conditions as they are over this initial period, and then as I say at the right moment have an inquiry as to the future based upon our experience.

11,603. What I was going to ask you, Secretary of State, was this : Do you think that the arrangement you are proposing here would work under the Minister ? That is the point I was driving at. For instance, under your scheme, if I may just give a few details, the pay, pensions, and allowances would be entirely under the control of the Secretary of State and non-votable. Then dismissals, suspension, reduction, removal, also, would be outside the control of the provincial and the federal minister ; even posting will be outside the control of the minister. Any order of a superior official would be appealable to the governor or governor-general ; there would be no power to keep even places vacant ; there would be reserved posts, and the ministers would not be able to retrench except after paying compensation, and there are similar other provisions. I am asking you whether you are not producing a dualism in your anxiety to protect the services and thereby making the services more and more unpopular instead of identifying them with the Minister in charge so that he would always regard the services as his own agents which he was entitled to protect before the Legislature ?—I think

whatever plan we adopt we have got to accept the fact that there must be anomalies, and there must be a certain measure of dualism as a result of past history. Mr. Jayaker himself has just admitted that need by saying that existing rights up to the commencement of the constitution must be safeguarded. The only difference therefore between us is whether there should be a further period or not before the coming into operation of the constitution for new entrants. We are both agreed that for existing people their existing rights must continue.

11,604. But is it not possible to make the two consistent, that whereas you protect their existing rights by pension and dismissal, removal or censure, for all administrative purposes you pass them under the control of the provincial or federal Minister, subject to the right of appeal to the Secretary of State ; is that not a possible way of consistency between the two ?—I would have thought if you are going to maintain existing rights you cannot pick and choose between them.

11,605. They all do not stand upon the same level ?—They may not all stand upon the same level, and I would not certainly urge that they are all of the same importance, but I think if you once start picking and choosing between them you will disquiet the services very much. I think you will make recruitment much more difficult in the future, and I think you will lay yourself open to the charge of a breach of faith. That being so, I hold the view very strongly that we must maintain all existing rights and that we must really leave it to the common sense of the Governors, and of the Secretary of State, if ever he has any, and of the Provincial Governments to work this, I admit, anomalous scheme in a reasonable way.

11,606. But you do not apprehend the danger which some of us do that in actual working it may amount to this, that the Federal or the Provincial Minister in defending an action before the Legislature may be able to get out of the difficulty by putting the whole blame on his agents, on the ground that he has no control over those agents ?—No, frankly, I do not contemplate a contingency of that kind.

Sir Austen Chamberlain.

11,607. You assume common sense on the part of the Minister, too?—I assume common sense on both sides. I do not know whether it is too great an assumption to make, but I do continue to make it.

Mr. M. R. Jayaker.

11,608. Then I just want to ask one or two questions about paragraph 182. I suppose you speak of the compensation there as including the compensation on the abolition of a post, on which we had discussions during the morning?—Yes.

11,609. That assumes, I imagine (correct me if I am wrong), that the Minister will have a right to retrench posts, subject to compensation?—Yes, within the limitation of whatever posts are scheduled.

11,610. He would have no right to abolish a post which is within the schedule: is that so?—Not of his own independent initiative.

11,611. Then how does the question of compensation arise if those posts are never to be abolished except under the Secretary of State's sanction?—Compensation would then arise if they were abolished under his sanction.

11,612. Then about compensation, you told us your views in great detail, that every case shall be considered on its merits?—Yes.

11,613. But may I in this connection ask your attention as to whether you approve of certain principles in this connection which were mentioned by Sir Thiruvallangudi Vijayaraghavacharya speaking on behalf of the Indian Officers' Association at the end of last term's evidence, which you will find in question 11,409 in volume 11 C, page 1297. I will just read one short paragraph from that evidence and ask you whether you approve of the suggestion which he has made in this connection. He was answering a question put by me at page 1297 as to how compensation should be given. This is what he said: "My view is that ordinarily no claim to compensation should arise where selection posts are abolished, but where, in Lord Peel's words, administrative changes result in a loss of selection appointments so con-

siderable as seriously to prejudice reasonable prospects, there should be a claim to compensation. I would add to this that in each case where an officer claims that the case falls within these words of Lord Peel, the case should be stated to the Public Service Commission and its opinion ought to be taken, whether the case really comes within those words or is merely a case of ordinary abolition." Would you accept those principles in judging of the compensation?—Yes, generally speaking I would accept the position that I think the witness accepted, set out by Lord Peel. As to consulting the Public Service Commission, I should expect that recourse would be had to the Public Service Commission, but it would have to be recourse at the discretion of the Secretary of State. I can quite contemplate the Public Service Commission being consulted in cases of that kind.

11,614. You would not exclude all reference to the Public Service Commission?—No, I should not at all, but I should leave it to the discretion of the Governor-General and the Secretary of State to take a case of that kind to the Public Services Commission if they wished to.

11,615. Then about paragraph 183, I think it is supposed to be a reproduction, as you mention in the list, of section 96 (b) (2) of the present Government of India Act?—(Sir Malcolm Hailey.) Yes.

11,616. Then what I want to know from the Secretary of State is this: In this assurance which you give in paragraph 183, in the last three lines, you will notice that you are there speaking of those officers who are appointed after the commencement of the Act; you have spoken of those who were appointed before the commencement in paragraph 182; in paragraph 183 you are speaking of public servants who have been appointed after the commencement of the Act?—(Sir Samuel Hoare.) Yes.

11,617. Then you give an assurance at the bottom of that paragraph: "It is intended that these rules"—which you take power to make in that section—"shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the

Act." There is no such assurance given in the Government of India Act at present operative with reference to those who were appointed after the date of that Act?—That is so.

11,618. May I just have a reference to that in the present Government of India Act? Those who would be appointed after the passing of that Act will get the same conditions of service as those who were appointed before the Act?—Mr. Jayaker is quite correct; that is so.

11,619. There is no such assurance?—That is so.

11,620. Therefore in this manner it goes beyond the protection given by the Government of India Act of 1919?—Yes; it goes beyond the Government of India Act for this reason: we felt that the changes now contemplated were much greater than the change contemplated in 1919; therefore, if we were to get good recruits in the next five years we must make the assurance as strong as we could.

11,621. I just want you to tell us, because it is not quite clear to me, the joint operation of paragraphs 182, 183, 184 and 188. Combined together, they mean this, that the benefit of Appendix 7, Part I, practically will be claimable by public servants whom you appointed before or after the Act or whom the Crown appoints after the Act or who may be holding a listed post. All these public servants would get those rights which are mentioned in Appendix 7, Part I, under the operation of these three sections. Am I right?—That is broadly true, yes.

11,622. That means practically every servant, whether he is appointed by the Secretary of State before the Act or after the Act or whether he is appointed by the Crown before or after the Act, or whether he is in fact holding a listed post. All these servants will get the benefit of Appendix 7, Part I, under the operation of these three paragraphs?—Yes.

11,623. Do you not think it is a very wide extension of those special rights which are mentioned in Appendix 7, Part I?—Again, it is just this issue: whether you give the new entrants in this period, whatever it may be, the same rights as existing officials or not. We think it is wiser to give them the same

11,624. You think it is wiser to give them the same exceptional privileges as to those appointed by the Crown or by anybody appointed under the Secretary of State's list?—That is continuing the present arrangement.

11,625. Remembering that most of the rights in Appendix 7 are only by departmental rules, they are not all in the Government of India Act, you are now dignifying them into constitutional rights. Do you not think it is right to reserve them only to those services for whom they were originally intended?—We have felt that with this very great experiment it was wiser for a period to keep things as they are. I do attach such immense importance to recruitment continuing satisfactory in the years immediately following the commencement of the Act.

11,626. I take it that you will reconsider this question when the Statutory Inquiry after five years takes place?—Yes.

11,627. Then paragraph 187: There is one question which is troubling me on that: "The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council", and so on. I take it that the power of delegation which the Secretary of State enjoys under Section 96 (2) of the present Government of India Act is kept intact in spite of the wording of paragraph 187?—May I just look into that for you?

11,628. Yes?—I think I have got the answer, but I would like to be quite accurate.

11,629. If you please. Then one more question on that: there is no provision in the present proposals analogous to Sections 99 and 100 of the present Government of India Act, power to appoint certain other persons with reserved offices and power to make original appointments in certain cases. There is no substantive provision like Sections 99 and 100 although you refer to certain rights in the matter in Appendix 7. Would you like to reserve your answer to that question, too?—I am informed that powers of that kind are comprised in paragraphs 185 and 188.

11,630. Paragraph 185 is : "The Secretary of State will be required to make rules regulating the number and character of civil posts to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons, or the keeping vacant of any reserved post"—I am not speaking of that, Sir Samuel; I am speaking of the power which section 99 gives to the authorities in India to appoint any person of approved merit and ability to any of the superior posts; and section 100 does the same thing. There is no section, so far as I am aware, in the present proposals corresponding to those two?—We intend that that power should continue and we believe it is covered by one or other of those clauses. We will see when it comes to more accurate drafting that that power shall be continued.

11,631. And if it is not clear enough, you will have power such as that given by sections 99 and 100; you will make specific provision for that power?—That is our intention.

11,632. Thank you. Then, going to Schedule VII, page 120, you remember the opinion expressed by Sir Tiruvalangudi Vijayaraghavacharya (I do not want to go into details and take up your time) with regard to many of these rights, that they will have to be reconsidered if provincial autonomy and the Federal Ministers' responsibility is to be rendered complete. You remember the answer that he gave?—Yes, I remember.

11,633. May I refer you in this connection (I am not going to read them) to questions 11,052, 11,055, and 11,058, at pages 1297 to 1299. He definitely expressed the opinion of his Association in question 11,055 that this list of rights requires to be very carefully modified if provincial autonomy is to be made a success. Then, later on, in question 11,058, he said : "In the case of such people who are recruited at the centre and posted into the provinces, he would not slacken the provincial control over them, subject to the appeal to the Governor-General." In the light of this opinion expressed by the responsible representative of the

Indian Officers, would you reconsider this list in the light of these comments? I am not asking an answer just at present?—As far as I remember the evidence to which Mr. Jayaker has referred, it left a rather obscure impression upon my mind that at any rate one or two of the gentlemen who came to give evidence were not quite clear as to what existing rights they wished to safeguard. Be that as it may, it is our considered view that if we are going to maintain service rights, as it is our intention to maintain them, we must take service rights as a whole; and that is the reason why we have put all the service rights in and we have not tried to pick and choose between them.

11,634. But take, for instance, the posting of an officer; do you think that will not interfere with the working of provincial autonomy?—I think all those things, if they are worked foolishly, will interfere very much with the machine of government, but I do not believe in actual practice they will. It would be our intention, if provincial autonomy is started, to make provincial autonomy effective. Anyhow, speaking for myself, so far as I am concerned I should discountenance any action, on one side or the other, so to make a pedantic use of rights as to make government impossible.

11,635. You think that by appropriate devolution rules you could remove the difficulty?—I should not like to say how, but I am assuming there is common sense on both sides.

11,636. But it sometimes goes beyond common sense. For instance, you say that no public servant in that particular cadre can be posted except with the consent of the Governor-General or the Governor, as the case may be. Do you not think that that will seriously interfere with the freedom of the Minister?—I would have thought that it would not at all. If you take now the head of a great Department here, no doubt he takes an interest in the postings in his Department, but I should think the cases in Whitehall are very rare when a Minister has not accepted the advice that is given him, and in actual practice a Minister in a great Department here has little or no say in the postings of his Department at all.

11,637. Take, for instance, right No. 16: "Right of complaint to the Governor against any order of an official superior in a Governor's Province"?—We mean by that phrase anything affecting the official's personal rights. We do not in the least mean that an official could go to the Governor and complain about a line of policy. We do mean that he should have the right of access to the Governor where his personal rights are affected.

Dr. B. R. Ambedkar.

11,638. You mean a matter in which he is wrong?—Yes.

11,639. That is exactly the language used in the Government of India Act?—Yes.

Sir Hari Singh Gour.

11,640. Sir Tiruvalangudi Vijayaraghavacharya in his evidence said that that always was intended to be limited to personal rights?—Yes.

Mr. M. R. Jayakar.

11,641. Then it will have to be made clear that it does not refer to administrative orders?—Certainly.

11,642. Then paragraph 196—Public Service Commissions—just one or two small questions upon that. "The members of the Federal Public Service Commission will be appointed by the Secretary of State." Do you see much difficulty in accepting the recommendation of the Services Committee that the time has come when you should substitute for the Secretary of State the Governor-General at his discretion—not the Governor-General on the advice of his Ministers?—I have never thought that an issue of that kind was an issue of principle.

11,643. I am only mentioning it because that was the recommendation of the Services Committee?—Yes. The fear I have had about changing the name (that is what it may amount to) is that it should be open to misunderstanding on both sides; that in India it should give one impression, namely, that the control is in future Indian; and that here it should give the impression that it really makes no difference whether you call the appointing authority the

Secretary of State or the Governor-General.

11,644. What I am pointing out is that it does not make any difference in substance because the Governor-General at his discretion under one of your proposals is always under the Secretary of State?—Yes, and it is just because of that that I gave the previous answer. I have been nervous of a change of name creating the kind of misunderstandings I have just alluded to.

Mr. Zafulla Khan.] Which particular recommendation of the Services Committee are you referring to, Mr. Jayakar?

Mr. M. R. Jayakar.] Page 66 of the Report of the First Round Table Conference.

Mr. Zafulla Khan.] It was the Government of India then.

Witness.] My own view would be that in all appointments of this kind upon which obviously the Secretary of State would have no detailed knowledge it would in actual practice be the Governor-General who would make the recommendations.

Mr. M. R. Jayakar.] The answer to Mr. Zafulla Khan is that I am referring to paragraph 5 at page 67 of the Services Committee's Report: "In every Province and in connection with the Central Government a statutory Public Service Commission shall be appointed by the Governor or Governor-General, as the case may be."

Mr. Zafulla Khan.] I am much obliged.

Mr. M. R. Jayakar.

11,645. Then with regard to the Provident Pension Funds to which you refer in the Introduction, page 36, paragraph 73, you are there referring to certain proposals which have not yet matured for consideration, according to this paragraph. When they are ready, then you say you will consult members of the Services before any decision is reached. Would you likewise consult the Indian Legislature upon this important point just as you consult the Services? If you decide upon taking some action of very far-reaching character you have promised to consult the Services in that

way. Would you consult the opinion of the Indian Legislature on that point? —I had not contemplated consulting the Indian Legislature for these reasons : First of all, it is a question that does not concern legislation at all ; secondly, it is a question that only indirectly concerns public money. The families pension fund is exclusively a fund of subscriptions. That being so, I have thought it was sufficient to consult the subscribers to the fund.

11,646. What I had in view was this. Supposing your decision takes this form, that it should be funded?—Yes.

11,647. And that it should be held in England : It may mean a serious depletion of the revenue at the resources of the Government of India?—No. I do not think Mr. Jayakar need be anxious upon that point. I think we have made it quite clear that if funding were to take place, funding would have to take place over a series of years. The effect upon the Indian budget would not be serious. I can assure him of that.

*Sir Phiroze Sethna.*

11,648. In Proposal 177 you suggest that the Secretary of State's advisers be appointed for a period of only five years and not be reappointed. At present I understand members of the Secretary of State's Council are so appointed. Is there any reason for the change proposed?—Yes, our reason is that we are proposing conditions which would make it essential for the Secretary of State's advisers to have more recent experience of Indian administration than they might have under the present rules, and if one made reappointment possible it would bring the time of their active service further away from the time of their appointment to the Council.

11,649. But such advisers are not to be only men drawn from the Services ; there may be others as well, as you have at present?—I would have thought it was a bad plan to have one set of rules for one member of a small body of this kind and another for another. I do not attach very great importance one way or the other to the point, but I think it is important to try to keep the Indian experience as well up to date as possible.

11,650. By Proposal 179 I see the Secretary of State is bound by the

decision of the majority of his advisers as regards rules which have been drafted for conditions of service, etc.?—Yes.

11,651. Is that the rule at present?—That is the rule at present.

11,652. Mr. Jayakar asked you a question with regard to the last sentence in Proposal 183, according to which you propose to extend the same privileges to those who will enter the Service after the Constitution Act comes into force?—Yes.

11,653. May I take it there will be no distinction in regard to these rules between the Indian members and the British members of the Indian Civil Service?—Yes—no more distinction than there is at present. I put my answer in that form, because Sir Phiroze will remember that there is this distinction between overseas pay and non-overseas pay, but I think what is in his mind is whether there would be differentiation in other ways between the two. There would not be.

11,654. I will tell you what I had in my mind. I understand that Indian members of the Indian Civil Service, after the passing of the present Government of India Act, were also given the concession to apply for proportionate pension if they desired it, but that concession was withdrawn about 1923 in the case of Indian members of the Indian Civil Service. I should like to know if this concession is proposed to be restored?—We contemplate no differentiation of that kind under our proposals.

11,655. That is to say, both Indian and European members of the Indian Civil Service will be given this concession?—Yes. Sir Malcolm reminds me that there is a difference now, but I think I am right in saying there was no difference after the passing of the 1919 Act. For the first period after the passing of the Act there was no difference.

11,656. For Indians the concession was withdrawn in 1923. I want to know if the Indian members of the Indian Civil Service are to be given this concession again?—Here again I would like the advice of the Indian Delegates. I would have thought that it was a mistake to make a distinction between the two classes.



11,657. My personal view is that there is no necessity now for continuing to offer this concession when the new entrants will enter the Service with their eyes open?—But we do not propose to make the concession to new entrants.

11,658. I am glad to know that. You mean neither to Indians nor to Europeans?—No: the concession is only for existing officials, British and Indian.

*Sir Phiroze Sethna.*] For Indians the concession has, as I say, been discontinued since 1923, but do I understand you to say that in the case of new entrants, Indians or Europeans, this concession, namely, that they could retire on proportionate pension, will be discontinued?

*Marquess of Reading.*] Do you mean new entrants since 1923?

*Sir Phiroze Sethna.*] No—new entrants after the Constitution Act comes into force.

*Mr. Zafrulla Khan.*] After the passing of the Act?

*Sir Phiroze Sethna.*

11,659. Yes.—I am reminded that we do give this right to the new entrants for the new five years.

11,660. Europeans and Indians?—I am informed it is Europeans.

11,661. Only Europeans?—Yes.

11,662. Then there is a distinction?—Yes, there is a distinction.

11,663. And you propose to continue it?—It is continuing the present rules. The basis of these proposals is to take over existing rules.

11,664. I am in favour of your withdrawing this concession from Indians; I am entirely in favour of what has been done since 1923; but I see no reason for continuing this concession to new European entrants after the passing of the Act. Will you consider that?—Yes.

*Mr. Zafrulla Khan.*

11,665. Will the Secretary of State consider whether there is any necessity to continue the concession after the passing of the next Act? After the passing of the next Act everybody will

know what is the proposed Constitution, and why should the concession regarding proportionate pensions be given to entrants who enter the Service after the passing of the next Act?—My reason was a purely practical reason, and there was no other reason in my mind, that I was nervous in these five years of recruitment going badly, and on that account I was anxious to give the new entrant every legitimate assurance that we could that he would have a career, and that he would have, generally speaking, the rights that existing officials have.

11,666. To that I am not objecting. By all means give him the assurance that the rights under which he enters will throughout the course of his service be guaranteed to him, but the concession that was given to certain officers on the passing of the last Act was on account of the fact that they did not know under what conditions they were then going to serve, and that they must be given the choice, and, if they did not like the conditions, they could go away. Why should that be continued after the passing of this next Act when everybody in the country will know the conditions under which they will be serving after the passing of the Act?—Will they know the conditions under which they will be serving? The Act will be there no doubt, but it is very difficult to predict with great changes of this kind what is going to happen, and I can well conceive a young man, and, perhaps more important, the parents of a young man, asking themselves the question: "What are going to be the conditions, not in the next year or two, but over a longer period," and there is no doubt about it at all, that this is a right that is greatly valued, and I believe myself that the fact that a right of this kind exists keeps people in the Service rather than drives them out of the Service. I think they feel that they have got this right in case things go really wrong, and that has a steady effect on them in their service.

*Sir Phiroze Sethna.*

11,667. On the contrary, that right might be resorted to in the manner Lord Lytton referred to?—What would

Sir Malcolm say about that, and the effect on service conditions, (Sir *Malcolm Hailey*.) I think on the whole it undoubtedly has a steadying effect on men. I often discuss with men the chances that they have under the new Constitution. I ask them whether they think that when the new Constitution is introduced they will have to leave India, and they say: "No, we intend to go on and see how it works, and we will go on as long as possible because we know that, if we find conditions as we consider them impossible, we still have the right of retiring on proportionate pension," and the result is that they go on up to the end of their ordinary services. I think there was, as Lord Lytton said, a certain number of men who originally retired, not really through being discontented at the changes in the Constitution, but for other reasons, but they have all gone. I do not think that men coming into the Service now are likely to retire in the same way. On the whole I should think that this liberty of retiring on proportionate pension will get you better recruits than if you withdrew the rule, and it is more likely to keep the people contented in the Service. That is the general feeling I have about it.

11,668. Will not this arrangement cost the country more?—(Sir *Samuel Hoare*.) I would have thought not. I would have thought what would cost the country far more is bad recruitment and constant changes.

Dr. B. R. Ambedkar.

11,669. Might I make a suggestion for consideration on this matter? Instead of giving the right outright to the new entrant would it not be better for the Secretary of State to retain a discretion in his own hands which he may exercise in a genuine case where a man wants to retire because he has really been suffering under the new conditions, and does not really want to take advantage of this rule?—We can consider a suggestion of that kind. I assume Dr. Ambedkar's suggestion refers to the new entrants?

11,670. Yes, I am talking of the new entrants. In that case the Secretary of State may retain in his own hands a certain amount of discretion which he

may exercise in favour of a man who has genuinely proved to the Secretary of State and his advisers that the reason of his retirement is discontent and dissatisfaction with the new conditions?—I should like to consider a suggestion of that kind. The doubt that is in my mind is whether the mere fact that there is this discretion will take away the assurance from the mind of the parent, or the university, or the school from which the young man is coming, but I will consider it.

Sir *Phiroze Sethna*.

11,671. You will consider it?—Yes.

11,672. To turn to the Public Service Commission, may I ask if the suggestion thrown out by Lord Eustace Percy this morning, of having only one Public Service Commission throughout the country, was considered by the authors of the White Paper?—Yes, I think we have certainly considered it, but we do not see at present how it would fit in with the various Provincial Governments.

11,673. Do not you think that such a Public Service Commission would be greatly looked up to, highly respected, and that it would be easier for Government to find a smaller number of very capable men to discharge these duties than would be the case if we had more Public Service Commissions throughout the country, and, further, will not it effect a saving in expenditure because, even if the Provincial Governments are asked to contribute towards a Central Public Service Commission, they would be contributing far less than what they would have to pay if they had their own Public Service Commission. At any rate, will you consider this?—Yes, I think there is a good deal in what Sir Phiroze says. On the other hand, I think there is a good deal in the arguments in favour of Provincial Commissions. I would have thought from the correspondence I have had on the subject that a good many of the Provincials were very intent upon having their own Commissions, and if there is a strong provincial feeling on the subject I would have thought that in the provinces they would pay more attention to their own Commission rather than to a Central Commission, the starting of which they may rather resent.

*Sir Abdur Rahim.*

11,674. May I make one suggestion in this connection: supposing discretion was given to the Provincial Government to utilise the Central Public Service Commission, perhaps some of the Provincial Governments might take advantage of that?—That is actually I am informed what happens now with the Central Provinces. They utilise the Central Public Service Commission. I think we might certainly consider the possibility of giving that power to a Provincial Government. I am nervous, though, of overriding provincial feeling upon a subject of this kind, and with the result that the prejudices of the province will be against the body that is doing these duties. That is what makes me nervous.

11,675. If you only give them discretion that might meet the case?—I quite agree.

*Sir Phiroze Sethna.*

11,676. I take it, Sir Samuel, it is contemplated that the services of the Public Service Commission might be availed of by other bodies than Government servants, such as railways, reserve banks, etc.?—Yes. I have certainly contemplated that so far as administration goes that would be the case.

11,677. Now to turn once again to the subject of accruing rights, you told us this morning, Secretary of State, that you will bear in mind the suggestion made by Sir John Kerr that supposing in a Province five Commissionership were abolished only the five senior men who might have been called upon to fill the position of Commissionerships might be given compensation, and you also added that you will bear in mind the views of your predecessor, Lord Peel. What I want to know is, will this compensation be paid for all time or is there going to be a limit in point of time, or whether such compensation, if any is given, will only be given to those who have joined the Service before the new Act comes into force and will not apply to those who join after the Act comes into force?—We have contemplated that it would be available for existing officials and for such officials as are appointed in this

period, whatever it may be, a number of years.

11,678. Five years?—Yes.

11,679. Now there is one more subject, and that is about pensions. Under paragraph 186 the White Paper says: "The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Indian taxation if the pensioner is residing permanently outside India", and the same privilege is proposed to be extended to new entrants. May I take it, Secretary of State, that this exemption from Indian income tax was offered in order to afford relief to the pensioner?—I think it was always assumed as part of the obligation.

11,680. It was done in order to benefit him as compared with one who is not a pensioner?—No, I think it was a part of the pension arrangement.

11,681. What I want to point out is that this exemption affords no relief to the pensioner himself whereas it adversely affects Indian finances—Indian revenue. Under the Indian Income Tax Act all income from whatever source derived, accruing, arising or received in British India, is subject to Indian income tax. Thus, if a Britisher who is not a Government servant entitled to pension resides in Great Britain and suppose he earns dividends on his shares in Indian Companies, he is liable to Indian Income Tax on such dividends, but because he brings that income to this country he has to pay on it British Income Tax as well. This would amount to double Income Tax, but under the arrangements arrived at to give relief from that double taxation he pays only at the rate leviable in this country, and there is a further arrangement under which the tax so levied is apportioned between Great Britain and India according to certain principles so that Indian revenues might not suffer. Now may I ask you, Secretary of State, if the same principle cannot be applied to pensions? The pensioner will only be taxed at the British rate. He will not pay anything in addition as Indian Income Tax, but the British Exchequer from what sum it collects from pensions should pay to India the amount of the tax the Government of India would be entitled to on such pensions. Such an arrangement is neces-

sary in the interests of Indian revenues, because the present system of exemption from Income Tax does not benefit the pensioner to the extent of a single penny, whereas it involves a loss of several lakhs of rupees a year to the Indian revenue. The only pensioners who would suffer by the removal of such exemption would be those patriotic gentlemen who reside abroad, away from England, to avoid the British Income Tax?—I am afraid I would not admit the justice of Sir Phiroze's claim at all. This is distinctively an Indian obligation. I cannot see in the least why the British Treasury or the British taxpayer should take it over. It is an Indian obligation that must be met out of Indian revenues. Secondly, upon Sir Phiroze's own admission this arrangement would leave outside any pensioner who was not residing in the United Kingdom, including the Channel Islands, the Continent and the Dominions.

*Sir Phiroze Sethna.*] Try to rope them in.

*Sir Abdur Rahim.*] But the Indian Income Tax Act provides that from all pensions payable the tax is to be deducted at the source and then the pension is paid. That is the provision of the Indian Income Tax Act.

*Sir Phiroze Sethna.*

11,682. I do not press for an answer to-day, Secretary of State, but this is a point which has been taken up in the Indian Legislature more than once. The loss of revenue amounts to several lakhs of rupees, and I would request you to give it your serious consideration?—I can quite understand the Indian taxpayer being very anxious to push this obligation on to the shoulders of the British taxpayer, but I can equally understand the firm determination of the British taxpayer under no circumstances to have the obligation shifted on to his shoulders.

*Mr. Zafrulla Khan.*

11,683. The obligation is to pay the pension. Is the obligation also to pay it tax-free?—Yes.

11,684. Supposing there is a British subject residing in India drawing his pension from Japan, is the British Government in India, in view of their obligation to pay that pension, not to deduct the tax?—These pensions, I think I am right in saying, have always been paid tax-free; that has been the habitual practice, and I would see grave objections to changing the arrangement.

*Dr. B. R. Ambedkar.*] What would be the position of a Civil Servant pensioner if he were residing in England? Would he not pay Income Tax on his pension if he drew it in India?

*Sir Abdur Rahim.*] It is deducted at the source.

*Dr. B. R. Ambedkar.*] Therefore to say the obligation is to pay the pension tax-free is not a correct statement.

*Sir Phiroze Sethna.*

11,685. No, it says, "will therefore also be exempt from Indian taxation if the pensioner is residing permanently outside India." He pays it in India?—It is a continuation of the existing prescriptive right.

11,686. True, but it is positively unfair in this case for this reason, that whilst a man who is not a pensioner and who derives his income from dividends on his shares in Indian Companies brings that money here, the British Exchequer pays the proportion of his Income Tax relating to that income from Indian shares to India; similarly the British Exchequer might pay the Income Tax upon the amount of the pension to India?—I cannot imagine that the British Exchequer would accept that point of view or would undertake an entirely new liability.

*Sir Phiroze Sethna.*] But they have accepted that liability in the case of other incomes—other than pensions.

*Chairman.*] I propose to adjourn now until to-morrow evening at 5 o'clock, when we sit until 7.15.

*(The Witnesses are directed to withdraw.)*

Ordered : That the Committee be adjourned to to-morrow at 5 o'clock.

4th October 1933.

Present :

Lord Archbishop of Canterbury.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Linlithgow.  
 Marquess of Reading.  
 Lord Middleton.  
 Lord Irwin.  
 Lord Snell.  
 Lord Rankeillour.  
 Lord Hutchison of Montrose.  
 Mr. Butler.  
 Sir Austen Chamberlain.

Mr. Coeks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Issae Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Sir Joseph Nall.  
 Lord Eustace Percy.  
 Miss Pickford.  
 Sir John Wardlaw-Milne.  
 Earl Winterton.

The following Indian Delegates were also present :—

## INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
 Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. N. R. Jayaker.

Mr. N. M. Joshi.  
 Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STUART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] Lord Reading, I understand that you have a question you desire to put to the Secretary of State ?

Marquess of Reading.

11,687. There is one question I desire to put to the Secretary of State on an answer given yesterday ; it is with reference to a question from Colonel Gidney. Colonel Gidney's question, as I understand it, concerned the protection of the pensions of services other than the All-India services and the responsibility for security. The phrase used, I think, was "more obligation". I thought at the time that the answer might convey some further implication than was intended. I did not know ; but what I am anxious to ascertain from the Secretary of State

is whether or not there is any limitation upon that, because, from the answers given earlier in the day to Sir Austen Chamberlain, I am almost certain it would be rather difficult to reconcile the two statements. I do not know whether the Secretary of State can help us upon it ?—(Sir Samuel Hoare.) In replying Sir Henry Gidney, I intended to make it clear that what I said earlier in the day in answer to Sir Austen Chamberlain in regard to the security of pensions was not limited to the pensions of the All-India Services, but applied in principle to the pensions of persons not controlled by the Secretary of State. I explained that His Majesty's Government had announced that they had no intention of allowing a state of things to arise in

India in which a repudiation of debt could become a practical possibility, and, further, that it is inconceivable to them that, in dealing with any scheme of constitutional change in India, Parliament could fail to provide such safeguards as may be necessary to ensure the due payment of pensions to officers who have served the country. These pledges obviously apply equally to the Services which Sir Henry Gidney has in mind as to those controlled by the Secretary of State, and the powers conferred by the White Paper are such as we believe will enable them to be implemented without any question arising of pensions, in case of default, being actually made by His Majesty's Government themselves. I take this opportunity however of correcting a possible misunderstanding on another point. I see it suggested in the Press this morning (and, incidentally, I would draw the attention of the Chairman and the Committee to yet another leakage of our proceedings) that I had stated that gazetted officers and subordinate services would be treated similarly to the superior services, the implication being that they would be so treated in all respects. A comparison of paragraphs 182 to 189 and 191 to 194 of the White Paper will show that this is not the case. I will explain the matter in greater detail in the note that I have promised to circulate.

*Sir Hari Singh Gour.*

11,688. My Lord Chairman, I understand the Secretary of State is, at the present moment, confining himself to the elucidation of points arising out of the White Paper without giving his own view on the various points after consideration of the evidence which has been given on this subject by responsible witnesses, including the representatives of the Indian Officers' Association?—I am giving evidence of both kinds. I am defending the proposals of the White Paper, but in my defence I am by no means ignoring the evidence that has been given to the Committee.

11,689. May I in this connection draw the attention of the Secretary of State to a passage which occurs in the Simon Report, volume II, page 289, paragraph 330, to the following effect, "None of

the provincial Governments recommends the continuance of All-India recruitment for the irrigation branch of the Indian Service of Engineers or for the Indian Forest Service". Do I take it that this view has found favour with the authors of the White Paper?—No. In the White Paper we propose a transfer of the Service. What I was doing yesterday in answer to certain questions, was emphasising what I think is accepted by all of us, namely, the great importance of the Irrigation Department and the difficulty in view of its extent, say, in a province like the Punjab in applying to it special treatment.

11,690. But the view of the Simon Commission was that these services should be provincialised according to the view of the provincial Governments; that all the provincial Governments were for the provincialisation of those services. In the passage which I have referred to, the view of the provincial Government was that the All-India recruitment for these services should not continue?—That is the proposal of the White Paper.

11,691. So I wish to point out that the proposal of the White Paper accords with the views of the provincial Governments referred to in the Simon Report?—With the views of the provincial Governments referred to in the Simon Report, that is so.

11,692. It has been said in a question or two that if the provincialisation of the services took place, there might be an elimination of the European element and in consequence a deterioration of efficiency. I wish to point out that this proposal of the White Paper is in accordance with the view of all the provincial Governments who were consulted by the Simon Commission?—That is so. It is however fair to say—and allusion was made to this fact yesterday—that in the Punjab there is a difference of opinion.

11,693. That difference of opinion might have arisen since the provincial Governments had written to the Simon Commission at the time?—Yes. I have had my attention called to the passages in the report of the Simon Commission; I think they amount to this, that the Governments took the view that Sir Hari Singh Gour has just stated. The ex-

perts, on the other hand, took the other view.

Sir Hari Singh Gour.] That is so.

Marquess of Reading.

11,694. Is it right that the Commission itself took the other view, too?—No, the Commission itself accepted the views of the provincial Governments, but in evidence there was contrary evidence given by experts.

11,695. I may be wrong about it, I am only just looking, but I see almost in the sentence that follows from what Sir Hari Singh Gour read, "some of the heads of these Departments take another view"—that is the experts.

11,696. Then follows this sentence: "We ourselves see strong advantages in the preservation of All-India recruitment, particularly for the Irrigation Service"?—Yes. Let us just carry it on to the end, Lord Reading.

11,697. Yes, I have not read it all; I only noticed that?—I thought in the recommendations at the end the provincial recruitment was accepted.

11,698. I have read through hastily all that paragraph; it does not qualify that?—In any case, if the service is to be a provincial service, I think that the Committee should realise the difficulties that there may be in All-India recruitment. Lord Reading, I have got now a further passage here in which it is correct to say that the actual conditions of recruitment were left open. The transfer was accepted, but the conditions of recruitment were left open. On page 314, paragraph 367, it says: "It is a matter for consideration whether the Irrigation Service and the Forest Service should not be similarly recruited"—that is to say, upon an All-India basis.

Marquess of Reading.] I only made the correction because the passage that Sir Hari Singh Gour read, confined as it was to Governments, nevertheless did not bring in the fact that the Commission had not accepted that.

Sir Hari Singh Gour.] I was dealing with the views of the provincial Governments as conveyed to the Statutory Commission.

Marquess of Reading.] Quite right.

Sir Hari Singh Gour.

11,699. May I also draw the attention of the Secretary of State to a passage in the Lee Commission Report, paragraph 14, page 8, where they point out that the continuance of an All-India Service amenable to an outside authority is a constitutional anomaly? May I quote the exact words? "In the transferred field the responsibility for administration rests on Ministers dependent on the confidence of provincial legislatures. It has been represented to us that although Ministers have been given full power to prescribe policy, they might be hampered in carrying it out by the limitations to their control over the All-India Services inasmuch as members of these services, unlike those of provincial services, are appointed by the Secretary of State and cannot be dismissed except by him, whilst their salaries are not subject to the control of the local legislatures. Ministers themselves have told us that the All-India officers serving under them have with negligible exceptions given most loyal support in carrying out their policies but the constitutional anomaly remains that the control over the transferred field contemplated by the framers of the Government of India Act has remained incomplete." The White Paper proposal therefore continues this constitutional anomaly for at least the next five years after the commencement of the new Constitution Act. Is not that so?—Yes.

11,700. Now if we examine the question in a closer light, is it not a fact that the recruitment for the next five years after the commencement of the Act would be of members of the Indian Civil Service or of the Police Service, who would, during these years, carry on the duties which are carried on in India by members of the Provincial Civil Service. Sir Malcolm Hailey, with his experience of the administration of India, will perhaps bear me out when I say that during the first few years the members of the Police and India Civil Services carry on exactly the same duties as the Deputy Collectors and Magistrates, and Deputy Magistrates and Deputy Superintendents of Police. Is it or is it not so?—(Sir Malcolm Hailey.) Yes, during the first few years they do.

11,701. Therefore the result of the continuance of recruitment after the commencement of the Constitution Act would be that you will have an accumulation of a number of young men who, during those five years would be carrying on the duties which are ordinarily carried on by the members of the Indian Provincial Services. Now, that being the case, what data can be furnished at the end of five years to judge of the appropriateness of continuing the All-India recruitment when the main test of the necessity of having All-India Services would be wanting in view of what I have just now pointed out?—(Sir Samuel Hoare.) I should not agree that the main test would be wanting. I think there are a number of tests, and I do not know which I should say was the main test. What I should have thought was most important to retain was a breathing space in which things could settle down. After all, however well the constitution goes, the first few years are going to be very difficult years. Further, we all, I suppose, admit the necessity of getting good men, British and Indian, into the various Services. I can imagine no greater calamity than that, if in the first difficult years such changes were made as to endanger recruitment to the Services. On that account the whole basis of these proposals is that there should be a breathing space in which we should gather together as far as we can the experiences of the period, but still more in which we could avoid any kind of grave anxiety taking place in the minds of the families, British and Indian, from whom recruits are drawn, with the result that the recruitment to these Services, British and Indian, might be compromised for many years to come, and indeed for ever.

11,702. In view of the last sentence of the Secretary of State's statement, may I beg to point out to him that, even assuming all that he has said, the conclusion is a *non sequitur* because there is a very large body of opinion in India voiced by the representatives of the Indian Officers' Association which comprises a fairly large number of Indian members of the Indian Civil Service, namely 26, as stated at page 1299, who might under the new Constitution prefer, as the representatives say they would prefer,

that their recruitment and conditions of service should be under the Governor-General. If the Secretary of State would put the new recruits upon election, and ask them whether they would like to be under the control of the Secretary of State or the Government of India then the apprehension he has in his mind would be, to a large measure, if not entirely, dispelled?—Sir Hari Singh Gour is really raising a whole number of different issues now. Indeed, in his last sentence, he raised two issues as if they were the same. They are very different issues. He spoke at the beginning of his sentence of recruitment under the Governor-General, and he spoke at the end of his sentence of recruitment under the Government of India. The two things are very different.

11,703. I admit that.—What exactly is in his mind?

11,704. I would modify the statement that is made in the evidence and say we will assume the recruitment under the Governor-General?—Yes. Now there is an issue that the Committee should legitimately consider. Let me state it?

11,705. Yes?—It is said that Indian sentiment would be better reconciled to the recruitment of the All-India Services if the Governor-General were the recruiting agent, and not the Secretary of State; the Governor-General, that is to say, at his discretion. Indian sentiment I would admit would favour an alternative of that kind. On the other hand, the case has been put to me that a change of that kind, whether it meant much or whether it meant little, would rightly or wrongly disturb the sources from which we draw recruitment in this country. I am not quite clear myself what it is exactly that Sir Hari Singh Gour, and those who hold this view, really contemplate. Do they contemplate that this changed method of recruitment should be little more than a change in name, or do they contemplate that it should be a change in substance, and if it is to be a change in substance, what exactly is it that they have in their mind? I ask this question not to make a debating point, but for this reason. I have always been very nervous myself of making a proposal of this kind that



might appear to mean much to India, and might appear to mean little here, and I think that of all things that we wish to avoid it is misunderstandings of this kind, and I would like to know, if I may, from Sir Hari Singh Gour what exactly would be the change that he has in mind if the Viceroy became the recruiting agent instead of the Secretary of State.

11.706 May I draw the attention of the Secretary of State to a question put to Sir T. Vignayacharya, 11.056, Volume II C, page 1299: "Now as regards the future recruits to the Indian Civil Service (I will deal with the other members later on) the view of your Association is that then control should rest in the Governor-General, acting under the advice of the Public Services Commission?—(A) 'Yes so.' The Indian Government favours the view that it there is to be a real responsibility in the Governor-General of India, and in the Provinces, the Services should be under the control of the Governor-General and the Provincial Governments?—But let us be clear about this, Sir Hari Singh Gour. You said just now the Governor-General at his discretion."

11.707 Yes. What do you mean by the Governor-General and the Provincial Governments?

11.708 This is the logical conclusion I was dealing with. I am now coming to the practical side?—Yes.

11.709 But I refuse the difficulty of being wholly logical in matters of this kind, and I suggest that Indian sentiment might be satisfied if the recruitment and control of the All-India Service during the transitory period of say three years is left to the Governor-General under the advice of the Public Services Commission as is recommended by the Indian Officers' Association?—Hon. member, Sir Hari Singh Gour is not really splitting hairs over these points, but I want to be quite clear. You have not "acting under the advice of the Public Services Commission" in the Governor-General would not be the Public Services Commission. You do not mean more than that because the Secretary of State would be acting at his discretion.

11.710. Yes?—The sort of difficulty that arises is this: Supposing the Governor-General becomes the recruiting agent he becomes the recruiting agent for the strength of the Indian Civil Service over the whole of India.

11.711 Yes?—That is to say, it would be he who would decide the cadres for the Provinces. Now there I should like to hear the views of other Indian Delegates. I am inclined to think that the Provinces would resent that kind of interference.

11.712 But they would resent much more the kind of interference which the White Paper proposes where the recruitment is left entirely to the Secretary of State who determines the number of posts to be filled and the offices that the incumbents will hold, and control even the transfer from place to place of those officers. That, I submit, is a much more detailed control by the Secretary of State than what is proposed by me?—Constitutionally I suppose there is no difference. The Governor-General does not act independently of Parliament. Constitutionally the channel is Parliament, the Secretary of State, the Viceroy, and constitutionally there is no difference, is there?

11.713 When the appointment is made by the Governor-General at his discretion he has a much larger measure of discretion than he has as an agent of the Secretary of State and of His Majesty's Government. In the one case he acts not on his own responsibility but as the instrument of His Majesty's Government. In the other case he has his own discretion and that discretion might be overruled by the Secretary of State, but it is, nevertheless, a real discretion which he exercises and upon materials which he collects for himself.

Sir Austen Chamberlain.

11.714 May we be clear about this, Secretary of State, because the phrase, "Governor-General acting at his discretion" occurs in regard to many matters in the White Paper and is of great consequence. Am I right in understanding that the "Governor-General at his discretion" means the Governor-General free from any control by his Government or the Indian Legislature?—Yes.

11,715. But subject to all the control which the Secretary of State constitutionally exercises over him?—That is bound to be the constitutional position. You see, Sir Hari, it really comes down to this, that it is an issue between these two alternatives: If the change means very little, is it worth making in view of the anxieties that it does stir up in certain people's minds? If it means a great deal I think still more would it stir up anxieties in the minds of the Indian Civil Service, and I feel still more would it stir up anxieties in the minds, possibly, of Parliament; but, as I say, this is a difficult issue and we have thought a great deal about it. Upon the whole, we thought that for this comparatively short period it was better to make no change at all to go on exactly as we are.

Mr. M. R. Jayaker.

11,716. May I ask the Secretary of State's attention in this connection to paragraph 21, Clause 1 of the Governor-General's Instrument of Instructions?—Yes.

11,717. I want to know whether, as Sir Hari Singh Gour suggested, the Governor-General in recruiting and controlling would be acting at his discretion. I suppose that clause would apply to the Governor-General's actions. Paragraph 21, the first clause, says: "The matters arising in your Departments which you direct and control on your responsibility or in matters the determination of which is by law committed to your discretion"—that is the technical expression?—Yes.

11,718. Then you go on to say: "It is our will and pleasure that you should act in exercise of the powers by law conferred upon you in such manner as you may judge right and expedient for the good Government of the Federation."—this is the important thing—"subject, however, to such directions as you may from time to time receive from one of our Principal Secretaries of State"?—Yes.

11,719. So he would be guided by the Secretary of State under this clause?—Yes.

11,720. So practically there would not be much distinction between the Secretary of State controlling and recruiting

on his own authority and the Governor-General doing so at his own discretion. In both cases the supreme authority would be the Secretary of State?—In both cases the supreme authority is the Secretary of State. That does not, of course, exclude the possibility of different arrangements being made, but those arrangements would be bound to be subject to Parliamentary approval.

11,721. But what I was suggesting was that, even if the Governor-General at his discretion was given this power, practically under this clause the Secretary of State would be empowered to give such directions as he liked to the Governor-General?—Yes, constitutionally.

11,722. Therefore, the proposal, while it meets the Indian wishes, does not slacken in any way the ultimate control of the Secretary of State?—That is just the kind of position that Mr. Jayaker has correctly explained that I wish to avoid. I wish to avoid a misunderstanding, namely, that we appeared to be doing something that we were not really doing.

Sir Abdur Rahim.

11,723. There is the further consideration, is there not, that the Secretary of State would not be acting in a matter like this without consulting the Governor-General, so practically there will be no difference?—I think practically there will be little or no difference, unless, as I say, changes were made in the methods generally of recruitment. Changes might equally be made by the Secretary of State as by the Governor-General.

Sir Hari Singh Gour.

11,724. The other suggestion in this connection is stated in the Report of the Services Sub-Committee of the First Round Table Conference, page 65, where I find the following short statement: "Dr. Ambedkar, Mr. Zafrulla Khan, and Sardar Sampuran Singh are averse to further recruitment on an All-India basis for the Indian Civil Service and the Indian Police Service, save in respect of the European element in those Services"?—Yes.

[Sir Hari Singh Gour.] The suggestion that is embodied in this recommendation seems to be that the Secretary of State

may continue to recruit the quota of European Members of the Indian Civil Service and the Police Service, but leave the Provinces and the Government of India to recruit the rest. Is not that what you meant, Zafrulla Khan?

Mr. Zafrulla Khan.] Except for your addition of the words, "and the Government of India."

Sir Hari Singh Gour.] The Provinces. The Government of India would also require some servants.

Mr. Zafrulla Khan.] For their own services; but we were only dealing with Provinces.

Sir Hari Singh Gour.

11,725. Yes. Is there any objection to carrying out this proposal?—Again I still make my general answer which is really the basis of my proposals or the Government's proposals, namely, that in my view it is much wiser to make no changes at all in this comparatively short period.

11,726. That is an essentially conservative mind?—That is it exactly.

11,727. What would be the number of fresh recruits during these five years after the commencement of the Constitution Act?—I am told something in the nature of 200, European and Indian.

11,728. So the European would be something like 100, I suppose?—It is getting near half and half, is it not?

11,729. Yes. What is the full strength of the cadre of the Indian Civil Service and the Indian Police Services?—I am told about 1,200 and about 700.

11,730. Taking the Indian Civil Service, what percentage of the members of the Indian Civil Service perform purely judicial duties?—I could not possibly give the percentage offhand; I could have the figure looked up.

11,731. But supposing that there is a considerable percentage, may I ask the Secretary of State whether he is prepared to give effect to the recommendation of the Services Committee that the further recruitment to the judicial branch of the Indian Civil Service should cease? I think the recommendation is contained on page 65, paragraph 2: "We recommend that for the Indian Civil Service and Indian Police Services recruitment should be continued

to be carried out on an All-India basis, but the majority of the Committee are of opinion that recruitment for judicial officers should no longer be made in the Indian Civil Service"—I was just looking up the proceedings at the Round Table Conference. It is true to say that there was a strong feeling expressed against further recruitment of this kind. Since then we have made a very full inquiry into the state of affairs province by province in India, and we have come to the view—and I will ask the attention of the Committee to and the advice of the Committee on this point—that it would be a mistake to stop recruitment of this kind. We feel that recruits of this kind do add a very valuable element to the judicial system in India, perhaps particularly in India where so many administrative questions are interlocked with each other and with judicial questions. Our view is, subject to the further views of the Committee and the Delegates, that the Indian Judicial System would lose rather than gain by the absence of men of this kind. They do not amount to a large number, and as the Committee re-judicial life of India are well represented in the Judicature, but upon the whole we feel that it would be a mistake to lose this element in the Indian Judicature.

Sir N. K. Sircar.

11,732. Will this be one of the questions that the Statutory Inquiry after five years will consider?—Yes, certainly. Perhaps I may just add this further observation to what I have just said. No doubt, everybody in this room realises the fact that there is no racial discrimination at all. These civilian judges are Indians as well as British, and nothing that I said just now suggested any kind of racial discrimination between Indians and Europeans.

Sir Hari Singh Gour.

11,733. The Indian feeling is that professional judges should not be brought into competition with amateur judges, and the members of the Indian Civil Service are amateur judges?—If the Committee would agree, I should like Sir Malcolm Hailey to give his views as a practical administrator upon a

point of that kind. (Sir *Mulsohm Hailey*.) It is a matter, of course, that we have often discussed with Members of the High Courts, and I think I may say, without breaking any confidences, that Indian judges in the High Courts have themselves often expressed to me an opinion of the value of having Sessions Judges drawn from the Indian Civil Service. As for their being amateurs, the difference between the two is this, that whereas you take an Indian civilian and after five years put him through a judicial training, and then appoint him to the Judicial Service, in the case of men taken from the Bar, what we do at present is to take them into the Judicial Service after perhaps one or, at the outside, two years' practice at the Bar. That is the extent of the difference of judicial experience or legal experience between them. The value of the Indian Civil Service judge is that he has had a considerable experience of administrative and police work; he has also had what a very few members of the Bar have had when they come into the Judicial Service, a large experience of revenue work. His administrative experience becomes of particular value if and when he is appointed to a High Court judgeship, because the High Courts, as has been pointed out to the Joint Select Committee, have large administrative functions. Certainly, when all the local governments were consulted, they not unanimously, I admit, but by a strong majority, pressed on general grounds for the retention of the Indian Civil Service element in the judiciary, and although many opinions have been expressed by the High Court on the question whether judgeships should be reserved in the High Court by statute for civilians, and also on the question whether Indian civilians should be eligible to preside over those courts, yet the High Courts themselves, as a rule, have also been in favour of retaining Indian civilians in the judicial cadre.

Mr. *Zafrulla Khan*.

11,731. In order not to have to refer again to this matter, may I clear up one or two matters that arise from your statement, particularly that part which compares the legal experience of those recruited from the Bar and the ex-

perience of those who are drafted into the Judicial Service from the Indian Civil Service. You have said that those recruited from the Bar are recruited generally after one year—at the outside two years' practice. There, I would not differ much from you. In some Provinces it is sometimes three, four or five years. My question is this: Is it not a fact that those who are recruited from the Bar after two or three years' experience of practice are recruited as subordinate judges and not as district judges?—That is so, yes.

11,735. The members of the Civil Service who, after judicial training, are put into the judicial branch, are appointed as district judges?—That is so.

11,736. These Indian members of the Bar who are recruited as subordinate judges, after how many years' experience on the average do they become district judges?—After a considerable number of years.

11,737. From 15 to 20? Not always, but a considerable number of years—from 10 upwards.

11,738. Then it would be correct to say that as compared with the five years' experience on the administrative side of an Indian Civil Servant who becomes a district judge, they have 15 to 20 years' judicial experience as sub-judges and more than three years' experience as legal practitioners?—Yes; that experience as sub-judges is on the civil and not on the criminal side.

11,739. Then again, there is a small number of gentlemen who are recruited from the Bar direct as district judges in some Provinces, at least?—Yes; in some Provinces a very small number of appointments was made direct to the Sessions Judgeships from the Bar.

11,740. And those who are appointed direct as district judges from the Bar are not appointed with less than from 10 to 15 years' practice?—Yes.

Sir *Abdur Rahim*.

11,741. A statutory limitation of 10 years?—That was an experiment that was tried in some of the Provinces. I think the general feeling was that direct appointment from the Bar to Session judgeships did not allow you to

get men of the best class, that is to say, that if a man was really successful at the Bar, he would not come in as a Session judge but prefer to wait for his chance of a High Court judgeship afterwards.

Mr. *Zafrulla Khan*.] I was not contesting any of your statements; I merely wanted the material to be complete.

*Sir Reginald Cradock.*

11,742. Might I put another point, my Lord Chairman? It may be as *Sir Malcolm Hailey* said, that in the Punjab the civilian judge has no previous experience of the administration of civil justice; but in some Provinces the practice has been in force for a good many years of putting the man who has chosen the judicial service in for certain periods to do the work of a subordinate judge before he is afterwards promoted to be district Sessions Judge. I do not know whether it is done in the Punjab; I know it is in the other Provinces. On the other hand, I would like to stress one point on that subject, and that is that the magisterial experience of the Indian Civil Service judge, which may have been over many years, is of extreme value to him in regard to all the criminal cases that he has to deal with, so there is a great deal of compensation in the case of the civilian judge for perhaps not having studied the law quite as much as some of the members of the Bar?—I might add to my statement in view of what *Sir Reginald Cradock* has said that the civilian judge has always had a somewhat lengthy experience as a magistrate, and when the High Courts have discussed the merits of appointing civilians to the judiciary, they have always emphasised his value as a criminal judge.

*Archbishop of Canterbury.*

11,743. May I ask one question of the Secretary of State on this important matter? There was a good deal said during the evidence about the advisability, even if no change is made in regard to promotion of Indian Civil Service men to judicial office, that an exception might be made in the case of a Chief Justice. I understand it is the

practice now that an Indian Civil Service man who has been a High Court judge, has not been eligible for appointment as Chief Justice. I think you indicated in the evidence that you thought that, in spite of that, you would wish that present bar to be removed. On the other hand, others (I think *Lord Reading*) seemed to think that there might be great advantage in at least insisting that the Chief Justice should be a man who had throughout been trained as a lawyer?—(*Sir Samuel Hoare*.) I have always felt that these are very difficult questions and they are essentially questions for the Committee to discuss. My own view is, once again, that it is better to leave things as they are, I think, for this period.

11,744. But in this case, things as they are mean, as I gather, that an Indian Civil Service man is not appointed to a chief justiceship?—We have left that question very open for the Committee. It is really tied up with whether you should maintain or not the percentages in the appointment of judges. Our proposal at present in the White Paper is to remove all those restrictions. I think if you remove restrictions that might be argued to be to the advantage of the civilians, you ought equally to remove the other restrictions. But as I say, it is a question that I think is open to a difference of opinion, and I have never wished to dogmatise about it. My general view is that it is better to leave things as they are, leaving open the question as to whether or not we should remove these restrictions.

11,745. But my point is that you are making a change in the White Paper of things as they are. As things are, an Indian Civil Service man is not appointed to the post of Chief Justice. My reference is question 8000?—I think His Grace has made a perfectly valid point. It is an issue that is tied up with the question that we discussed in July, namely, whether there should be any restrictions or whether there should not.

*Marquess of Salisbury.*

11,746. But I understand that in practice you have never appointed as Chief Justice anybody except a lawyer?—That is so.

Lord Irwin.

11,747. There is no statutory bar at present to an Indian Civil Service man being appointed?—(Sir *Malcolm Hailey*.) The statute has been so interpreted.

Sir *Reginald Craddock*.] But he very frequently is appointed to act for some considerable time.

Marquess of *Reading*.] That is only an acting appointment.

Sir *Hari Singh Gour*.

11,748. Now coming back to the answer given by Sir *Malcolm Hailey*, may I ask him: Is it not a fact that while an Indian Civil Service officer when he is told off to do judicial duty is not necessarily a law graduate or has any legal qualification. Every member of the Bar who is appointed to a judicial office is invariably a law graduate, added to which he has had some forensic experience?—That is so, certainly, yes.

11,749. And if the considerations which Sir *Malcolm Hailey* had pointed out for the composition of the judicial service in India were sound, would it not follow that they would have been accepted by the British Cabinet and introduced into England and the other self-governing Colonies of the British Empire?—(Sir *Samuel Hoare*.) I should not like to make an answer about that at all; I think it is very much a matter of opinion.

11,750. Now I wish to refer to another question, that is with reference to the accruing rights. It is stated in the Lee Commission Report that there should be a legal covenant, a contract. I will draw the attention of the Secretary of State to page 49 of the report. The heading is: "The Safeguard of a Legal Covenant." The Commissioners say in paragraph 85: "As regards emoluments generally, we consider that, in all circumstances, the most practical form of safeguard would be a mutually binding legal covenant, enforceable in the Civil Courts, between the officer and the authority which has appointed him. We recommend therefore that such a contract should be entered into in the case of all future recruits, and, that to secure the position of existing officers a similar contract to be entered into, so framed as to cover the remaining liabilities con-

needed with their service and the privileges to which they may be entitled." Has the Secretary of State considered the advisability of adopting this procedure in preference to embodying them in the constitution Act?—Yes. Not only have we considered it, but I think successive Governments have considered it, and the more we have considered it the more impracticable we have found it. It is in actual practice quite impossible to put into the form of a legal covenant all the contingencies connected with a great and complicated service.

11,751. Then as regards the right of compensation to officers, the Secretary of State stated yesterday that it is left to the Secretary of State to determine the amount, if any, of the compensation to which an officer might be held entitled. Might I in this connection draw the attention of the Secretary of State to the following recommendation contained in the Lee Report, paragraph 82, on pages 48 and 49. They say: "We recommend, therefore, that the Secretary of State should refer such claims for compensation, as they arise, for consideration and report by the Public Service Commission, which, being the expert authority in India on all Service questions, will be well qualified to form a just opinion. The Indian Members, however, would limit the references to the Public Service Commission to cases other than those necessitated by retrenchment or curtailment of work. In such cases they consider there would be no ground for compensation except for the incumbent of the post abolished." The question I wish to ask the Secretary of State is why no effect has been given to this recommendation?—We do contemplate that in many cases the Public Service Commission would be consulted. It seems to me very valuable that there should be consultation of that kind, but there is a difference, of course, between the conditions contemplated under the Lee Commission, namely, when the Government in all its activities was directly under Whitehall and the condition in which there is a large transfer of responsibility. That really makes the reason why we cannot go further than say we would encourage consultation with the Public Service Commissions. It would be very difficult, I think, to make it compulsory,

in view of the changes that are taking place.

Mr. *Zafrulla Khan*.

11,752. Secretary of State, would not it be, as a matter of course the case, that when the case comes up to the Secretary of State it will come up with the opinion of the Government of India?—Yes.

11,753. And possibly of the Governor-General as being charged specially with regard to the safeguarding of the rights of the Public Services and, as a matter of course, without making any covenant to that effect, as it were, the opinion of the Public Service Commission will in due course have been obtained?—I should think ordinarily that would be the case. I should think always, but I do not want to appear to be too rigid about it.

11,754. I rather thought that would be so?—I would have thought so. It seems to me to be the obvious course for a Secretary of State and the Governor and the Governor-General to take in circumstances of that kind.

Sir *Hari Singh Gour*.

11,755. Under the proposals of the White Paper the Secretary of State would be bound by the advice given by his advisers upon two points, namely, the framing of rules and, secondly, the decision on appeals. As regards the framing of the rules I wish to ask the Secretary of State whether the time has not come when he should frame rules limiting the right of compensation in accordance with the decision of the Law Officers of the Crown and the despatch of his predecessor Lord Peel quoted in the Lee Commission's Report, and make it abundantly clear that those are not cases for compensation?—I hoped I had made my position quite clear yesterday in answer to a number of questions. I did specifically say that we were basing our general attitude upon those two lines, namely, the opinion of the Law Officers of the Crown on the one hand, and the interpretation based upon grounds of wider equity given by Lord Peel as Secretary of State subsequently.

11,756. But that, no doubt, is the view of the Secretary of State to guide him in his executive actions?—Yes.

11,757. But what I was suggesting is that, in order to make sure that the rules do not contravene the opinions given by the Law Officers of the Crown, the rules should be framed now to the effect that the cases dealt with by Lord Peel and the Law Officers of the Crown are not cases admitting of compensation?—I do not understand that question. If I have followed Sir Hari Singh Gour aright, it would mean that there would be no compensation at all; is that so?

11,758. Yes, that is so: not in those cases?—In what cases would there be compensation?

11,759. That is a question. So far as I am concerned, in no case should there be compensation, but I am not dealing with that point now?—Then it is not worth our while going on arguing about it, because you take the view that there should be no compensation at all. I do not take that view: so there is no basis of agreement between us. I take the view that in certain cases there should be some compensation.

11,760. The point I was making to the Secretary of State was that the cases in which there should be compensation should be defined so that they may not be improved upon or enlarged later on?—The trouble is that you cannot define these cases. They are really indefinable, and, as I said yesterday, we have no intention whatever of involving the revenues of India in extravagant and unjustifiable expenditure under that head. That fact is shown by our record over the last fifteen years, but we do feel that somewhere or other there must be a discretion of this kind.

Sir *Abdur Rahim*.

11,761. I just want to put two or three general questions. Secretary of State, I should like to find out what your view is as regards the control over the Indian Civil Service and the Indian Police Service that will be left with the Provincial Government which employed the officers under the proposals of the White Paper?—Sir Abdur Rahim, would you make your question a little bit more precise?—I am not quite sure to what you refer.

11,762. I will take, for instance, the number to be recruited. Supposing the

Government of a Province says, "We want five officers," or something like that: will the Secretary of State have an absolute discretion to recruit a larger number if he likes?—Certainly, up to the cadre strength, he must have the ultimate authority. I do not think you can avoid that, but I am not at all contemplating a state of affairs in which there would be a difference of opinion upon a question of this kind. It is not as if each of those various interests is going out to try to have a controversy with the other. I would hope that there would not be a difference of opinion.

11,763. Would the Secretary of State, therefore, consult the Government of a Province as regards the number?—They always are consulted now, and certainly we should go on consulting them.

11,764. The Government or the Governor: that is the distinction I have in mind?—Constitutionally the consultation would be with the Governor, but in actual practice no doubt he would take the Government into his confidence. What happens is this, is it not, Sir Abdur Rahim: There is a cadre up to which you recruit and then you consult with the Provinces as to what their requirements are. Perhaps Sir Malcolm would amplify for the benefit of the Committee what I have just said. (Sir *Malcolm Hailey*.) There is a cadre strength laid down which contains an element of leave reserve, training reserve, and the like. Every year recruitment is made against calculations which show what are likely to be the number of vacancies in the cadre owing to various causes. The Local Government is always consulted as to the exact extent of those probable vacancies, and the Secretary of State then recruits that number of men who are necessary to fill up the vacancies that are likely to occur. To that extent the Local Government is always consulted. The Local Government is not consulted as to variations in the cadre year by year, though on occasion the Local Government does put forward to the Secretary of State the necessity for varying the cadre. For instance, under recent retrenchment proposals representations have been made that certain posts might be filled from the Provincial Service and not from the Indian Civil

Service cadre. It is on questions like that that discussion does take place between the Secretary of State, the Government of India and the Local Government.

Archbishop of Canterbury.

11,765. Would Sir Malcolm say when he speaks of Local Government now that would, of course, mean under the proposed changes the Provincial Ministry?—I think so in the future, yes.

Sir *Abdur Rahim*.

11,766. Then the Local Government will not be in a position to vary the number—I mean to vary the cadre?—(Sir *Samuel Hoare*.) No, you cannot avoid that, but, as I say, I hope that no difference of opinion would arise.

11,767. As regards posting that is one of the matters which is in the Appendix. How is that going to be worked as regards the posting of officers? Is it the Governor-General who is to do the posting, or the Government—I mean the Governor?—(Sir *Malcolm Hailey*.) The initial assigning of Indian Civil Service or Police Officers to their Provinces is carried out by the Secretary of State. The wording "posting" in the Appendix refers to the posting to particular appointments within the Province. The ordinary procedure is that the Departments concerned make suggestions for appointing a particular officer to the post of District Magistrate or transferring him, or the like. In my experience there is very seldom any difference between Ministers and the Governor as to these postings. They do come up to the Governor, and, on occasion, the Governor may have to speak to Ministers as regards the advisability of altering their proposals for postings, but it is not at the moment a matter which causes any great difference of opinion in my opinion between the Governor and the Ministers.

11,768. Sir Malcolm, may I just put this: Now, as regards the posting of the Members of the Civil Service that is in the Reserved Department, as it is called?—That is so.

11,769. But under the new Constitution there will be no such thing as a



Reserved Department in the Provinces, and the entire secretariat, I take it, will be under the Ministers?—That is so, certainly.

11,770. Then how are these postings going to be carried out—by the secretariat under the Ministers, or by any Officer attached to the Governor?—At present, of course, the majority of the Indian Civil Service are in Reserved Departments and proposals for their posting do come on the Reserved side to the Governor, though, at the same time, there are many Indian Civil Service Officers serving in Transferred Departments. They are serving, for instance, as Registrars of Co-operative Societies, and the like, so that Ministers frequently have a say in the postings and transfers of Indian Civil Service and other officers. That case arises particularly in regard to Indian Medical Service Officers who are all serving in a transferred Department. In the future, as Sir Abdur Rahim points out, all Departments will be transferred; there will be no Reserved Departments; and the Ministerial heads of these particular Departments will themselves be responsible for all postings and transfers, but where they concern the posting or transfer of a member of the Secretary of State's Services, the Minister in charge will have to obtain the concurrence of the Governor.

11,771. In every case the Government will have to go up to the Governor with the proposal?—(Sir Samuel Hoare.) You cannot say exactly what the procedure will be as a general thing. No doubt Governors will arrange their own procedure in their own way, but the general position is as stated by Sir Malcolm Hailey. Actually how it is carried out must be a matter for arrangement by the Governors in their respective Provinces.

11,772. What has struck me, and what I am putting to you is that under these proposals the Governor must have an establishment of his own—a secretariat of his own to carry out all these things?—(Sir Malcolm Hailey.) No, that is not involved at all. All these matters will be carried out in the ordinary secretariat. All that will happen will be that when

it is proposed, for instance, that a District Magistrate should be transferred, or an officer shall be appointed as Commissioner, or the like, the case will be sent to the Minister, or taken to the Minister by the Governor for his concurrence.

11,773. I see. As regards promotion up to the District Magistrate or the District Judge it is automatic, is it not, and, beyond that, there is an efficiency bar, and then there are selection posts, are there not?—The appointment of District Magistrate is not automatic; that is to say, that an officer is presumed to become eligible for the appointment of District Magistrate after about six or eight years' training. He is then definitely selected as District Magistrate usually in an officiating capacity, first of all, and subsequently permanently. It is therefore to that extent selection. I have known cases in which a Local Government has refused to appoint an Indian Civil Service Officer as a District Magistrate, and has kept him as a Sub-Divisional Magistrate practically the whole of his career. When a man is appointed a District Magistrate he remains in that cadre for the whole of his career, unless he is selected for the post of Commissioner, Member of the Board of Revenue, or any similar post.

11,774. Yes; but, ordinarily, the Indian Civil Service Officer becomes a District Magistrate, or a District Sessions Judge. That is his ordinary expectation?—Yes, that is the ordinary rule.

11,775. There is really no question of promotion at all then?—My point was that it is not in the phrase you used automatic, because, in some cases, we may keep a man waiting for a considerable time before we regard him as fitted to have charge of a district, but, as you say, the ordinary expectation of a Civil Servant is that at a certain time of his career he will become a District Magistrate, or a District Judge.

11,776. Then after that the Commissioner, or the Member of the Board of Revenue—those are what I think are called selection posts, are they not?—Yes, that is to say, that you might have taking a Province like the Punjab,

28 districts and five Commissionerships, therefore out of your 28 permanent District Magistrates five have an expectation of becoming Commissioners. The proportion is much the same in Provinces like the United Provinces.

11,777. What I want to know is, under the proposals of the White Paper, who will make these selections for these higher posts?—(Sir Samuel Hoare.) I suppose the position will be exactly the same as it is with postings. (Sir Malcolm Hailey.) Yes, it will be the same position as with postings. One cannot say in advance exactly what the arrangements will be under the rules of business in each province, but substantially it will undoubtedly have to be the case that ministers will make recommendations for selection to commissionerships, but those selections will need the concurrence of the Governor.

11,778. It will really be that the Government will make the selections, but it will require the assent of the Governor or province?—Yes.

Marquess of Zetland.

11,779. May I interpose one question there, my Lord Chairman, just to clear up the whole of that matter? What would be the position with regard to appointments to the Secretariat? Would those require the concurrence of the Governor or not?—Yes, that is a posting which would require the concurrence of the Governor.

Lord Eustace Percy.

11,780. Provided that he is an All-India man?—Provided that he is an All-India officer, and, of course, if we continue the scheduled procedure, then all secretaries, save secretaries in the Public Works, or any other excepted Department, would be members of the All-India service.

Sir Abdur Rahim.

11,781. And that is the state of things as at present, is it not?—That is so, yes.

11,782. There will be really no advance in that respect—placing the offices more under the control of the Government of the future?—(Sir Samuel Hoare.) I

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think there obviously must be a change when a large transfer of new departments takes place. The position then of these officers will approximate more nearly to the position of the All-India services under the transferred departments. (Sir Malcolm Hailey.) The difference will be that the selection recommendation will be made in the future by ministers but will need the concurrence of the Governor. At present postings of Indian civilians, selections for secretariats and the like, are all made within a reserved department.

11,783. But there are only a few posts that in filling up require the concurrence of the Governor now—the more important posts; the others do not require the concurrence of the Governor. Is that not so?—I do not think it is correct to say that, because being made in reserved departments the Governor can, under the rules of business, and I think nearly always does under the rules of business, require that all such cases should be brought to him. I think I am correct in saying that in nearly every local government these cases, coming within a reserved department, all come to the Governor by his rules of business.

Lord Irwin.

11,784. May I interpose to get this clear, my Lord Chairman? The essential difference between the present practice and what will be the practice in future, if I follow the argument, is the source which makes the recommendation to the Governor?—Yes.

11,785. At present in all the reserved departments, of course it is the reserved side which makes the recommendation. In future the recommendation will be made by ministers?—Yes, that is the entire difference and it is a very important one.

Sir Abdur Rahim.

11,786. May I know what your opinion is as regards this? Questions have been put as regards Indians holding certain responsible positions in the Irrigation and Forest Departments—that there has not been sufficient experience to say how far the transfer of the services and the control of the ministers and those in the

transferred departments has affected the efficiency of the departments or not. I should like to know from the Secretary of State as regards his experience of the Indian members of the Indian Civil Service, because quite a number of Indians have held very high posts in the Indian Civil Service in almost all provinces. Excepting the governorship, I think there is no post which an Indian has not held. I should like to know what opinion the Secretary of State has formed as regards their work?—(Sir Samuel Hoare.) It would be very presumptuous of me, I think, to make a wide generalisation after a comparatively short contact with Indian affairs. I would certainly say, however, that it seems to me their record has been a very good one. For further details, I would like to go to an experienced administrator like Sir Malcolm Hailey. (Sir Malcolm Hailey.) It would be very invidious if I had to express an opinion on Indian colleagues. I think where we have selected Indians for these high appointments, they have invariably done well. When I stated yesterday—which I think was the main point which Sir Abdur Rahim was referring to—that it would be necessary to see Indians filling the administrative posts of the departments we were referring to them, such as irrigation and forests, before we could say what had been the effect of the change, when I said that I was referring to the fact that the change that was taking place in those departments was not merely the substitution of Indians for Europeans, or a change that would take place, but a substitution of provincial services for All-India services, and it would be necessary to see some of the effects of the administration by members of the provincial services before we would be in a full position to judge of the change that was taking place in those departments.

11,787. In that connection, I should like to know whether it is not possible for the Government, as regards provincial services, to introduce a higher system of training and education than obtains now. I mean there would be no difficulty in their way, would there?—(Sir Samuel Hoare.) I suppose the main difficulty is money with all these things, is it not?

11,788. That would apply to all?—It applies to us here. I expect it applies equally to India.

11,789. There is one thing I want to know about: What is now the Political Department? You know at present the Legislature can deal with questions in that Department though in a limited way. Will the Legislature retain the same power over the activities of the Political Department when it goes under the Viceroy?—I am not quite clear. Is Sir Rahim asking this as a general question, or in its special application to the services?

11,790. Not as regards the services. As regards the Legislatures dealing with the Political Department, will they have the same power as they have now in the Legislatures?—What powers have they got now?

11,791. As regards discussing questions?—This question of course has nothing to do with the services, and it does raise the other issues connected with the States with which we have already dealt at some length. What occurs to my mind offhand—I did not know that this question was going to be raised to-day.

11,792. If you do not want to answer it to-day, I will not press it?—I would say it would come in better in a more general constitutional discussion.

11,793. Certainly; I will not press it. That is all?—I think if Sir Abdur Rahim would look back at my evidence which I gave on Section 52, he would find that I did say something about it then.

Sir Abdur Rahim.] I have no further questions.

Marquess of Zetland.

11,794. May I just ask one more question before we pass from that, because I am not quite sure that I understood Sir Malcolm Hailey's final reply about the Secretariat? Of course, I understand that in the case of any officer who is a member of the Secretary of State's service who is appointed to a Secretariat, the concurrence of the Governor will be required. But take the case of heads of departments who may be appointed from what will be provincial services, for example, the post of Director of Public Instruction. What I am not clear about

is this : In a case of that kind, would the Minister in charge of the Education Department be the final authority appointing the Director of Public Instruction, or would he have to secure the concurrence of the Governor to his appointment ?—(Sir *Malcolm Hailey*.) When the Education Department or similar departments become entirely provincialised, then the appointment of the head of the department would not require the concurrence of the Governor unless some change was made in the present proposals which would secure that the concurrence of the Governor should be required for such an appointment. (Sir *Samuel Hoare*.) As long as he is a member of the All-India Services, then the concurrence is needed.

11,795. But he would not be a member of the All-India Service ?—He might be now, might he not ? (Sir *Malcolm Hailey*.) If I might make that clear : for some time to come in these services it is quite clear that the appointment of the head of a department will require the concurrence of the governor, but when they become completely provincialised, that is to say, when all the present members of the Secretary of State's Services disappear from them, then the concurrence of the governor will no longer be required in the terms of the White Paper unless some change is made in those terms.

Lord *Eustace Percy*.

11,796. Then the Departmental Minister of a provincial government in India will have a great deal more power over the appointment of a head of his department than a Departmental Minister has in this country ?—(Sir *Samuel Hoare*.) That is about what it comes to.

Lord *Rankeillour*.

11,797. Will the Inspector-General of Police be appointed without the concurrence of the governor ?—No ; he is obviously a member of the Secretary of State's services.

11,798. And always will he under these proposals ?—For the period set out in the White Paper and until Parliament takes some other decision.

Mr. *Zafulla Khan*.

11,799. Secretary of State, with regard to paragraphs 176 and 179 at page 81, do I understand that, having regard to the functions which the Secretary of State's advisers will have to perform under these proposals, their main function will be a sort of safeguard for the services ?—Yes.

11,800. Safeguard against whom ? Against the Secretary of State ?—Against the Secretary of State, against the British Parliament, against unsympathetic people in India—in fact against a great many people who in theory may exist, but, in practice, I hope will not exist.

11,801. Would not the Secretary of State himself be a sufficient safeguard against unsympathetic people in India ?—I am not sure what the services would think about that. This, after all, is mainly intended to reassure the services.

11,802. What would be your own feeling with regard to the matter ? Would not the services rather consider the Secretary of State, being a member of the British Cabinet here, responsible to Parliament, and so on, would be a better safeguard than two gentlemen, both of whom might be Indians ?—I should like to hear Sir *Malcolm Hailey's* view and Sir *Findlater Stewart's* view about that. My own view is that the services do attach importance to this safeguard. (Sir *Findlater Stewart*.) I am quite sure they do, yes.

11,803. Then with regard to the last two lines of paragraph 179 : " Any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member,"—what happens if an appeal comes up to the Secretary of State and he desires to dismiss it, and two out of the three colleagues (let us suppose there are only three colleagues)—say that he ought to accept it ?—(Sir *Samuel Hoare*.) At present I am reminded that the Secretary of State has a vote and a casting vote.

11,804. But my question is with reference to the language of the proposal as contained in paragraph 179, as to what would be the result. The proposal is that in the case of any order " the Secretary of State will determine the matters upon which he will consult

his advisers." Supposing there are three advisers, two of whom will not concur in his proposed dismissal of an appeal, then how does the matter stand?—I think this is a point that must be cleared up. As at present drafted, I read it to mean that the majority vote would decide.

11,805. So that what it really amounts to is not whether the Secretary of State should carry with him the concurrence of so many, but the Secretary of State in this particular matter must carry out the wishes of the majority, whatever they may be?—Yes, that is the present position.

11,806. That is under the proposal?—Yes; that is the present position; it is a continuance of the present position.

*Mr. M. R. Jayaker.*

11,807. Including his casting vote?—Yes, so long as his casting vote is included. I am assuming it will be continued.

*Mr. Zafrulla Khan.*

11,808. That is a matter of detail, but it is a matter that struck me might be a difficulty in actual practice?—Yes. Sir Austen Chamberlain is here, a former Secretary of State, and we could ask Lord Peel when he comes. I do not think that kind of case has ever arisen in living memory.

11,809. But we are talking of the future and of the proposal as here expressed. Perhaps a slightly different expression might meet the case?—We will look into Mr. Zafrulla Khan's point carefully, and perhaps make a more detailed suggestion as to what had better be done.

11,810. Now on the question of compensation under paragraph 184 on the next page, the last three lines of the paragraph are: "The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded." The first part of the paragraph safeguards all service rights existing as at the date of the appointment. What are these last three lines intended to safeguard?—This paragraph is intended to give the

Secretary of State the kind of discretion that we have been discussing.

11,811. The discretion given in the paragraph is: "Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable." Would that not be necessary?—It is really to meet the point of the accruing rights, and if it were held in drafting that "service rights" was a sufficiently definite expression to cover both existing and accruing rights there, there might not be so much need for a paragraph of this kind, but I think it is safer to have it in.

11,812. My point is this: provided the first part does sufficiently cover what it is intended to cover, the latter part might create criticism and suspicion in spite of the amplest safeguards provided in the White Paper?—We will look into Mr. Zafrulla Khan's point. We do not want to have anything in the proposals that is not necessary. I can, however, conceive cases, into which I should like to look further, that might necessitate a paragraph of this kind.

11,813. So far as compensation for the abolition of a post or a series of posts is concerned, I do not want to go into details, but may I take it as almost axiomatic that in considering any questions that arise, regard would certainly be had, whenever there was an abolition of a post or a series of posts, to the creation of new posts that might have occurred during recent years?—I think you have to take all those kinds of consideration into account, and it is because many of them such as that are indefinable that one has to leave the power rather general.

11,814. That is true, but I was thinking of this: For instance, in recent years there has been a large increase in the number of High Court Judgeships, of which a proportion has gone to the Indian Civil Service. It would be rather anomalous that they should be going on appropriating all the increase?—I fully appreciate Mr. Zafrulla Khan's point. It is a point that I do not dispute.

11,815. To my mind the more important question is as to what is going

to happen in future, and a proposal with regard to that is contained in paragraph 189. I understand that the general position has been subject to the actual proposals and the explanations that you have given, that you consider it wise that during this short period, as you have termed it, before which an inquiry will be made under this paragraph, and a new decision arrived at, there should substantially be no changes?—Yes.

11,816. I want to visualize what the period will be. I do not want to bind you to any specific period, but I look at it in this way. Although the period is described as short, and the second subparagraph of paragraph 189 itself is rather vague, I look at it in this way: It visualizes several stages. First the passing of the Bill which will take some time; then it is coming into operation, which is again an indefinite period; and then this definite five years after that before the Inquiry is commenced; and then our experience of inquiries resulting from constitutional changes and so on shows that there will be some number of years during which the Inquiry will be in progress?—I hope not. I do not want it to be anything like that kind of inquiry.

11,817. Let us hope not, but it will take some time. Then there will be the period during which the new changes will be under the consideration of the Secretary of State and his advisers and the Cabinet, and then put before Parliament for the approval of Parliament. It seems to me that the period will not be so short as you have had in view all the time. A further consideration is this. Supposing this period is not five years but a great deal more, and if all conditions in the meantime are to continue as they are that means that recruits during this period enter upon their service under the conditions that operate now, and then it logically follows that they must be guaranteed the continuance of all those conditions throughout their careers. It seems to me that even in the year 1975 (and I can prove it by these figures) in these so-called autonomous Provinces practically all the Heads of Departments will be people who with regard to the conditions of service and so on will be subordinate to, and will be

controlled by the Secretary of State, rather than by the Provincial Government. 1975 is about the average date that I take?—Yes; but Mr. Zafrulla Khan, even if his calculation is correct, will see that it is not a difference between no years and 42 years, but it is between 30 years, if you take that as the life of a civilian and  $x$  number of years, the interim period before any change is made.

11,818. Yes, but I was developing a question. I want to press this consideration, that having regard to the view that the Provinces have taken with regard to these services and to the state of public opinion, it would be extremely desirable to make this period as brief as possible and as definite as possible, more particularly for the reason that any greater material required for coming to a decision upon these points would not be material with reference to the efficiency of Indians and so on, because you could not in any case get that within the period of five years, but it would be more with regard to the working of the new constitution and to give a breathing space, as the Secretary of State has put it?—Yes, and, broadly speaking, the effects upon recruitment generally.

11,819. During the course of your examination you have said on a good many occasions that you would like the views of the Indian Representatives on some of these points?—Yes.

[Sir Austen Chamberlain.] Are you leaving the Statutory Commission or continuing on it?

Mr. Zafrulla Khan.

11,820. No; it is with reference to that that I am putting a further consideration?—Yes.

11,821. I want to put this to you. Perhaps my own view could not be better expressed than it has been expressed in the Memorandum submitted by the Government of Madras to the Indian Statutory Commission?—Yes.

11,822. It is in the Indian Statutory Commission, Volume VI, at page 26 of his Memorandum. This may be taken as the typical Provincial view which was expressed as long ago as 1928: "So far as provincial matters are concerned, the

position is clear. Responsible self-government, if it implies anything, implies that the Province must be free to recruit its own servants as and where it likes. There can be no imposing upon it a body of men recruited under regulations, from sources and on rates of pay prescribed by some outside authority. The All-India Services in the Provinces should be provincialised on the lines already being followed in the case of All-India Services operating in the transferred field, *e.g.*, the Indian Educational Service. All the prospects that the present members of these services now enjoy should be reserved to them. In the case of posts beyond the time-scale where the changes proposed in the Provincial Government make inevitable the disappearance of certain posts to which members of a service had always been able to look forward, adequate compensation in the form of personal pay should be given to those men from whom under the present conditions these posts would have been filled." What I want to emphasise is that this view was held five years ago, and this period of from 10 to 12 years before the results of the next inquiry are completed makes nearly half the period of an incumbent's service, and it is not a question that is arising to-day. The view which I now wish to put before you as an Indian Representative is that no doubt the Provinces must be prepared to accept the anomaly pointed out here in the nature of things for a certain number of years, but if that number of years becomes very long there will not be that reality about responsibility in the Provinces which alone can justify and on the basis of which alone the future constitution can be judged. I would, therefore, urge upon the Secretary of State the desirability of making his new proposals, after the required information has been obtained and the material has been gathered, by whatever form of inquiry he desires, as public as possible; and one way of doing that, I venture to suggest is this: During the discussions in the Services Sub-Committee of the First Round Table Conference it was thought that perhaps 1939, which was one of the dates fixed in the Lee Commission's Report for certain averages being arrived at, would perhaps be a good date for the new proposals to be

brought in, if it were possible to do so, I am perfectly certain the Secretary of State cannot say Yes or No to that at the present moment, but I have expressed that view, and I hope the considerations on which it has been passed will be kept in view?—I am much obliged to Mr. Zafrulla Khan for putting forward a view that I know is very strongly held in some of the Provinces. It is a view that this Committee certainly cannot ignore. Obviously we shall take into account what he has said. I can assure him that so far as I am concerned, I have had in mind very much the kind of difficulties that he has just explained to the Committee. None the less I have come to the view that, taking into account the many reactions of proposals of this kind, the White Paper proposals are, on the whole, the better proposals, but I can assure him that, whether that be the case or not, certainly I, and I am sure, all Members of the Committee, have taken note of what he has said.

11,823. One final question or, rather, suggestion, and it is this: It is with reference to something that was said yesterday with regard to the Irrigation and the Forest Services. With regard to all Services that may be provincialised, may I put this to you, that when a Service is provincialised it would perhaps not be fair to force any Local Government to agree as a rigid matter, to any particular proportion of Europeans being recruited into that Service on account of the danger that the Province might then be forced to recruit second- and third-rate men to those Services under the new conditions?—Yes.

11,824. I do not know whether you would think that that would be a very relevant consideration?—Yes, I think so, and one of the difficulties, of course, is the difficulty to which Mr. Zafrulla Khan himself alluded yesterday that even with no desire whatever to have anything in the nature of racial discrimination a province might offer, such terms of recruitment as to make it quite impossible for any European to take an appointment, or any but an inferior European. That is one of the difficulties.

11,825. On the other hand, we have had cases (I think Sir Malcolm Hailey would be able to recollect them) and I have some in view in the Agricultural

Service of the Punjab, where it was found that expert services of special kinds were required, and Europeans on contract were employed to render those expert services, and it would always be possible to do so?—Yes, it would be possible, certainly.

Mr. *Zafrulla Khan*.] The only point I want to stress is that laying down any kind of compulsory restriction of that kind would perhaps not conduce towards the best interests of the Service. That is all I have to ask.

*Sir Manubhai N. Mehta.*

11,826. One question about the Secretary of State's Advisory Council, Proposal 176. That makes a mandatory provision that out of not less than three two members should be appointed out of those who have put in 10 years' service or more under the Crown?—Yes.

11,827. Does not the Secretary of State consider it also advisable that some such provision should be made for including Indian members in the Advisory Council?—I said yesterday that it was certainly our intention to make no change in the procedure.

*Sir Manubhai N. Mehta*.] But here, if a mandatory provision like this is provided for men from the Service, should not some mandatory provision be made for Indian members.

*Sir Austen Chamberlain.*

11,828. Does not the phrase cover Indians as well as Europeans?—Certainly, and, *Sir Manubhai*, there is no ulterior motive in this phraseology except to avoid the appearance of differentiation between one kind of official under the Crown and another.

*Sir Manubhai N. Mehta.*

11,829. The practice has continued now for 20 years of appointing an Indian to the Secretary of State's Council, and *Sir Tej* was so appointed?—I cannot imagine the practice being discontinued.

11,830. Would the Secretary of State be prepared to leave it a mere question of practice instead of making a definite provision? As we provide for Service men, would it not be better to provide for Indians?—I am very open minded about it. I would have thought it better

to leave it as it is, but it is not with me a question of principle at all.

Mr. *Zafrulla Khan*.] Would not a provision that at least two out of six must be Indians meet the point?

*Sir Manubhai N. Mehta.*

11,831. I do not say at least two should be Indians. Some of them should be Indians?—I will not say "some," because it is a very small Council, but anyhow I cannot conceive a break in what has, as *Sir Manubhai* has just said, been a practice for many years.

11,832. In the absence of any such provision there may be a break in the practice?—There has not been.

11,833. What I mean is that there would not be any compulsion?—There is not any compulsion now, and what has happened, as *Sir Austen* reminded us yesterday, has been that more and more we have availed ourselves of the valuable services of Indians on the Council.

11,834. It would create satisfaction in India if such a provision were made?—My own view is that it is better to keep it open.

*Sir Austen Chamberlain.*

11,835. You will bear in mind that if, under existing conditions, a number had been mentioned, it is quite likely that Secretaries of State would have felt that that number must be treated as a maximum, and the Council would not have reached the present numbers?—I agree there is that danger.

*Sir Manubhai N. Mehta*.] I do not ask for any maximum or minimum.

*Sir Austen Chamberlain.*

11,836. There is one question which was not cleared up yesterday, and I think has not been cleared up to-day about this statutory inquiry under Clause 189?—Yes.

11,837. I understand the meaning of the phrase to be an inquiry which takes place pursuant to an Act of Parliament?—Yes.

11,838. Do you mean it to be pursuant to a provision in the Constitution Act, or do you mean, by the drafting adopted here, that there should be a special Act of Parliament when the time comes nominating the Commission?—No,



I certainly do not mean that there should be a special Act. I mean that it should emerge from the Constitution Act, if there is a provision of this kind.

*Chairman.*] I propose to adjourn now and to meet to-morrow at 10.30 when the Secretary of State and his advisers will again be in the Chair.

*(The Witnesses are directed to withdraw.)*

Ordered, That the Committee be adjourned to to-morrow morning, 10.30 a. m.

5th October, 1933.

Present :

Lord Archbishop of Canterbury.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Lanlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Lord of Middleton.  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Mr. Butler.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Lord Eustace Percy.  
Miss Piekford.  
Sir John Wardlaw-Milne.  
Earl Winterston.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Lt.-Col. Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.

Mr. N. M. Joshi.  
Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Sardar Bata Singh.  
Mr. Zafulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] We will now deal with paragraphs 119 to 121. before discussion takes place in the Indian Legislature.

Marquess of Salisbury.

11,839. Paragraph 119 deals with the relations between the new Legislatures and the Imperial Parliament ?—(Sir Samuel Hoare.) Is that so ? It deals with the cases in which the previous sanction of the Governor-General is required

11,840. Yes, certainly. What legislation is contemplated ? It is not suggested that the Governor-General would be entitled to give leave to the Legislatures to deal with the Constitution Act itself ?—No, certainly, not. Paragraph 110 safeguards that contingency.

11,841. Yes, that is what I thought. Would the Secretary of State then say what kind of Imperial legislation the Governor-General might give leave for the Legislatures to deal with?—He will realise that the words are very very wide: "legislation which repeals, amends, or is repugnant" (even what is repugnant to any Act of Parliament) upon all those his consent is necessary before the legislation is introduced. What sort of legislation is contemplated?—It deals really with a number of Acts, some of them quite old Acts like Acts of the reign of William III dealing with the way in which loans for India should be raised. Speaking generally, most of the Acts dealt with are not of great importance or urgency, and I think I could give the Committee an illustrative list of the kind of Acts that we have in mind, and that might legitimately react upon Indian affairs and justify a discussion in the Indian Legislature. Lord Salisbury, however, can take it from me that those Acts are mostly, as I say, historic Acts of the kind I have just suggested to him, and Acts of no immediate political importance.

11,842. I am quite sure that that is what the Secretary of State intends, but that is not what is provided in the paragraph. The paragraph is quite general: Any legislation with the exception of what is provided in paragraph 110, if the Governor-General gives consent, the Indian Legislature may deal with?—I think Lord Salisbury will see that paragraph 110 covers a very wide and important field.

11,843. "Any law affecting the Sovereign or the Royal Family, the sovereignty or Dominion of the Crown over any part of British India, the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act, and the Constitution Act," that is to say, mostly dealing with what we call the Reserved Services and the Constitution Act; but there is a whole mass of legislation, the Secretary of State will realise, upon which the law in India is built up which will be all open to amendment if they get the consent of the Governor-General?—All open to discussion if they get the consent of the Governor-General.

11,844. You mean that the Governor-General might in the end refuse his assent to it?—Yes.

11,845. Yes, but, at any rate, the Legislature is to be competent to deal with all this legislation, not merely historic legislation?—I think it is difficult to avoid some provision of this kind. Discussions of this kind of course have taken place under the present regime.

Earl of Derby.] I wonder if I could just ask this: Lord Salisbury, could you yourself give to us (because it is a most important point) some idea of the sort of Act that you think might come up? I think it would help us.

Marquess of Salisbury.

11,846. I can give one set of Acts at once: The Acts amending the Constitution Act?—The Acts amending the Constitution Act are excluded altogether under paragraph 110.

11,847. No, they are not. It is the Constitution Act itself which is excluded under proposal 110, not the amending Acts?—It would rest with Parliament to make a similar provision in the amending Acts.

Marquess of Salisbury.

11,848. It might do so, or it might not do so, but surely all this ought to be provided. Remember it is not merely what repeals or amends, but what is repugnant to, which is a most intricate matter.

Lord Irwin.] Before Lord Salisbury leaves that point, which I think it is very important to get clear, is it not perfectly clear under paragraph 110, that it is outside the competence of the Indian Legislatures to make any law affecting the Constitution Act except as in the Act itself provided. I should have thought that was an absolute safeguard as regards that particular point.

Marquess of Salisbury.

11,849. My noble friend is much more competent than I am to construe an Act of Parliament. I should not have thought the word "affecting" would necessarily cover that?—It is certainly our intention that it should cover it.

Earl Winterton.] Would it not help to elucidate this point if Lord Salisbury

tells us what, in his opinion, the word "affecting" does mean?

Marquess of Salisbury.] I am quite sure any noble friend will excuse me, but I am not a witness.

Earl Winterton.] You are putting forward statements, if I may say so.

Marquess of Salisbury.

11,850. After all, it is very necessary that this Constitution Act should be properly drafted, is it not?—I do not know whether Lord Salisbury means to imply by that that this is a draft of a Constitution Act. If he does I have told the Committee more than once that this is not a draft of any Act.

11,851. One cannot, of course, forget the Statute of Westminster. The Statute of Westminster is the Statute which controls, or, rather, justifies the full implication of Dominion status, and, therefore, anything which approaches Dominion status, or any enactment which will import it is a matter for us to scrutinise very carefully. There is no doubt that the Government intend that India should have Dominion status altogether. No one quite knows what Dominion status means, but that is what they intend. In those circumstances if you have a clause which reminds one at once of the Statute of Westminster, then it is necessary to find out exactly what it does mean?—I do not disagree with Lord Salisbury at all. We are all here to find out what these proposals mean. What I am trying to point out to Lord Salisbury is that, first of all, this is not the draft of an Act of Parliament, and it may well be that the words we have used do not exactly cover our intentions.

11,852. That is all I want to know?—I have told him, however, that our intention is that the Constitution Act and amending Constitution Acts should be outside the purview of the Federal Government altogether.

Sir Abdur Rahim.

11,853. Excepting so far as the Act itself provides?—Yes.

Marquess of Salisbury.

11,854. In order to clear the matter up with regard to other future legislation passed by the Imperial Parliament

which is not directly affecting the Constitution Act, will all that be open to amendment by the Indian Legislature?—This is not a question of amendment at all. This is a question of discussion.

Lord Rankellour.

11,855. It is introducing legislation?—It is not a question of amendment at all. It is a question of discussion.

Sir Austen Chamberlain.

11,856. Is that so, Secretary of State? The opening words of proposal 119 are "will be required to the introduction in the Federal Legislature of legislation"?—The Imperial Parliament could always bar any intervention of that kind.

Marquess of Salisbury.

11,857. Yes, it can. What you foreshadow is that in any Act in the future passed by the Imperial Parliament which deals with India there will always be the sort of words: "Notwithstanding anything in the Constitution Act contained"?—I suppose that would be possible.

11,858. I evidently have struck a vein which the Government have not thought of at all. I mean that particular set of points. I say that not by way of criticism?—Lord Salisbury is so anxious to make it appear that our proposals are very vague and badly considered that I must demur.

11,859. I am sorry. I did not mean to say anything in the least bit derogatory, but, on this vast subject, it is not surprising that certain points should have escaped attention. I quite understand?—I am not admitting that it had escaped attention.

11,860. It had not escaped attention?—No.

11,861. I just wanted to dwell upon the words "repugnant to" and how far they go. Of course legislation perpetually touches other legislation, and any legislation which is repugnant to an Imperial Statute will require the assent of the Governor-General before its introduction?—Yes.

11,862. But how is he to know whether it is repugnant or not?—I suppose he could receive directions from the Secretary of State and the Government here.

11,863. It may be so, but there are masses of small points in legislation which touch other legislation. Of course, I thought the answer which the Secretary of State would give me would be that he would have adequate advice in India as to whether it was or was not repugnant?—Yes, certainly.

11,864. Would he have a lawyer on his staff?—That would rest with him and the Government of the day to decide.

11,865. You think one of the Councillors will perhaps be a lawyer?—It might be so. It might be that there would be an Advocate-General who would advise him in questions of this kind.

11,866. But the Advocate-General will be part of the responsible Government?—We have not yet fully discussed the position of the Advocate-General: he might or he might not.

*Mr. M. R. Jayaker.*

11,867. The Federal Government may have an Advocate-General?—Yes.

*Marquess of Salisbury.*

11,868. Then I noticed a further word, but I do not want to dwell upon this. The Secretary of State will put it right directly. The words are: "The consent of the Governor-General will be required to the introduction of legislation"?—Yes.

11,869. But, of course, the repugnancy might appear in the form of an amendment in the course of the passage of the Bill?—Yes.

11,870. That is not covered by the words. I only just call attention to it?—No, but it is covered by Clause 121.

*Mr. M. R. Jayaker.*

11,871. Secretary of State, the provision is analogous to Section 25 of the present Government of India Act?—(Sir *Malcolm Hailey.*) Section 67. (Sir *Samuel Hoare.*) Yes; Section 67.

*Marquess of Salisbury.*

11,872. He can withhold his assent to the Bill?—Yes.

11,873. That is the ordinary veto, of course. But the point is that, whatever the value of the provision No. 119 is, it will not cover amendments to the Bill—only the introduction of the Bill. I

only call attention to the fact that that is, so?—Yes.

11,874. Then supposing (I just put this because I think the lawyers who advise the Secretary of State ought just to think of these things) that in point of fact a Bill does go through the Indian Legislature without the consent of the Governor-General which turns out to be repugnant, will that be challengeable in a court of law?—I assume it would either be invalid or vetoed— one or the other.

11,875. It will be challengeable, you say. If it is invalid, that assumes that?—No. I can visualise the veto being applied or the Bill being reserved for the Secretary of State's assent.

11,876. No, because it might go through altogether, you see, and it might be found out afterwards that it was repugnant to an Imperial statute. These things happen continually in our own experience, of course?—Yes; I would certainly say that if it was not vetoed and if it was not stopped in a constitutional manner of that kind, then it could be challenged in a court of law and declared invalid.

*Mr. Morgan Jones.*

11,877. Before what court, may I ask, would it be challenged?—Presumably, the Federal Court.

11,878. Would a Federal Court have authority to override the decision of Parliament in a matter of that sort?—This is not overriding the decision of Parliament; this is carrying out the decision of Parliament. It is interpreting the Constitution Act. The Act, Mr. Morgan Jones, would be invalid from the point of view of the Constitution Act.

*Mr. Morgan Jones.]* Yes, I see.

*Lord Rankeillour.*

11,879. And there would be an appeal to the Privy Council?—Yes; I understand there would be an appeal to the Privy Council.

*Marquess of Zetland.]* Secretary of State, with regard to the validity of the Act, do not the words in Proposal 121 deal with that—"but an Act will not be invalid by reason only that prior consent to its introduction was not

given, provided that it was duly assented to either by His Majesty, or by the Governor-General or Governor, as the case may be."

Marquess of Salisbury.

11,880. Then the conclusion Lord Zetland would reach is that if a Bill did get through the Indian Legislature which repealed or was repugnant or was an amendment of an Imperial Statute, then it would be valid even if the Governor-General had not, in point of fact, given his consent?—Provided it does not controvert No. 110.

Marquess of Salisbury.] Yes, quite so.

Lord Irwin.] And I suppose, in such an event, it would always be open, would it not, to the Imperial Parliament to pass an amending Act?

Marquess of Salisbury.] Yes.

Marquess of Reading.] May I point out that the words read by Lord Zetland go a very little way. I am not quarrelling with him; on the contrary, I am very glad to have the point raised; but an Act would not be invalid by reason only of the fact that prior consent to its introduction was not given. If it yet turns out to be repugnant to an Act of Parliament, those words do not affect it. You have still got to deal with what is repugnant.

Marquess of Zetland.

11,881. May we know what those words really do mean? I must say I was very much puzzled by them. I do not understand what their real implication is?—The object, in a sentence, if I may put it in the words of a layman, is this: Discussion may be allowed; a Bill may be introduced; the Governor-General may give his previous sanction, and in the course of the progress of the Bill an amendment may be introduced that, we will say, controverts No. 110 or makes in some way an infringement upon the rights of the Imperial Parliament. Proposal 121 is intended to avoid the claim then being made, that because the Governor-General had given his previous sanction at the beginning of the discussion, the Bill at the end of the discussion was valid.

Marquess of Reading.] May I make one suggestion?

Marquess of Zetland.

11,882. May I just point out that these words say, "by reason only, that prior consent to its introduction was not given." But if prior consent was not given how could the Bill be introduced?—Supposing it had escaped the Governor-General's notice and the notice of the Imperial Parliament. It might be in appearance, to start with, a matter of little importance.

Marquess of Reading.

11,883. Suppose there has been a slip, if I may put it in that way. For some reason, a Bill has got through which technically required the consent to its introduction, but it has not been obtained; yet if a Bill has gone through and then the Viceroy and Parliament and the Secretary of State have seen it and the assent has been given, it is not then to be declared invalid merely because the condition precedent has not been fulfilled. Is not that the true meaning of this?—Yes, exactly.

Marquess of Reading.] It is only to get over a possible slip.

Sir Austen Chamberlain.

11,884. May I put a case? I quite understand the case where the Governor-General's assent ought to have been given before the introduction of the Bill, but *per in curiam* it was omitted. It appears in the course of the discussion that this ought to have been done or when the Bill is presented for his assent he becomes aware that this ought to have been done, but he is ready to agree to it, and Section 131 provides that the law shall not be invalid because of the initial flaw, provided he has given his assent knowingly to it at the end?—Yes.

Sir Austen Chamberlain.] But suppose the oversight persists and it has not merely been introduced without notice being drawn to the fact that it ought to have had his assent but that his notice has not been drawn to that fact: when he finally gives his assent, is the Bill then valid and past all challenge or not?

Marquess of Reading.] If I may say so, certainly not. All that this Section

docs (to which Lord Zetland has called attention) is to say that the mere fact of the omission to have got the consent to the introduction—that is, the condition precedent, shall not declare it invalid if it is subsequently ratified, but all the difficulties that exist to which Lord Irwin called attention on paragraph 110, where it says it shall not be within the competence of the legislature, that is not affected in any way. It is still open to challenge, because it is repugnant or because it is *ultra vires*. I am only speaking now as a lawyer construing it supposing it was an Act. None of these words affect that. It is either *intra vires* or *ultra vires* and this Section does not touch that; it only deals with what is a condition precedent, and says if there is a technical flaw of that kind or otherwise, that is cured if afterwards the Governor-General gives his assent or the Secretary of State does; but it leaves all the questions whether it is *ultra vires* or reversed—to which I understand Sir Austen Chamberlain is referring—quite open.

Mr. Zafrulla Khan.] May I make a suggestion upon this point? I think the question can be divided into two parts. Number one, where the Federal Legislature, with which we are dealing at present, has no competence whatsoever to legislate upon any particular subjects; those subjects are specified in paragraph 110. But, supposing it does proceed to legislate upon any of those subjects and somehow nobody discovers the lack of competence from beginning to end and the measure is placed on the Statute Book with all the assents and everything, nevertheless the Bill is *ultra vires* because there never was any competence to legislate upon any of these subjects and anybody could challenge it subsequently and declare it to be *ultra vires*.

Chairman.] I have no doubt there would be a challenge in the Courts.

Mr. Zafrulla Khan.] Yes, a challenge in the Courts. But where there is competence, but before the competence can be exercised there is a bar placed before the Act of legislation could be exercised, that is to say, of previous consent, then the matter stands thus: The legislature

has power to legislate upon those subjects but must have obtained previous consent before it enters upon discussion of those measures. If it subsequently appears that this bar had not been removed but nevertheless at the end of the discussions the measure as it emerged from the legislature had been assented to by the Governor-General, then the non-removal of the bar shall not operate to invalidate the piece of legislation provided it affected or related to a matter which was within the competence of the legislature. In the second class of legislation, which affects matters which are within the competence of the legislature, where there is only a bar the mere non-removal of the bar shall be cured by subsequent assent.

Lord Rankeillour.

11,885. May I support that view by asking a concrete question? For instance, if a measure were passed which was found to affect the coinage and currency of the Federation which presumably would not be barred by Section 110, and then that received the assent, I presume that under these words of Section 110 it would be valid, would it not? —(Sir Samuel Hoare.) It would be.

Earl of Derby.

11,886. May I ask one question? Suppose assent was given to the introduction of a Bill and during the passage of that Bill an amendment is moved which would make it *ultra vires*, has the Governor-General got the power to intervene and say, "If you pass that particular amendment, then my original assent to the Bill is withdrawn"?—I do not think it would work out quite like that, Lord Derby. I think what would happen would be this: the Governor-General would, no doubt, make the position quite clear to the Government and to the Legislature and at the end of the discussion he would refuse his assent to the Bill.

11,887. He can refuse his assent to the Bill, but has he no power to intervene to the extent of saying, "If that amendment is passed, that invalidates the assent that I have already given to the

Bill" ? It is no use having the discussion and fighting it out if at the end he is not going to give his assent. Surely there ought to be some provision that he should be able to notify the legislature that in the event of that amendment being passed then his previous assent is invalidated ?—I would like to consult the Constitutional lawyers upon a point of that kind.

Marquess of *Reading*.] Is it not covered, Secretary of State, by the fact that he has the power to withhold his assent ? I quite understand what Lord Derby was putting, and can imagine something of the kind happening. Then, I should have thought it was open on the paragraphs as they stand, supposing those were translated into an Act of Parliament, for the Governor-General then to intimate to the legislature that if they insisted on a particular clause, amendment, or whatever it is, going through he shall withhold his assent, or he thinks that it is repugnant or whatever it is ; he gives them notice at once.

Earl of *Derby*.] He will have no power to prevent the discussion ; he will have to allow the discussion to go on, and simply say "If you pass it, it invalidates my assent".

Marquess of *Reading*.

11,888. Yes. "I shall not give my assent to the Bill" ?—Yes ; I see Lord Derby's point. Let me put it into a concrete form. Perhaps a question on which a discussion took place in certain circumstances might be especially dangerous would be a question discussing, we will say, the ratio of the exchange of the rupee, where mere discussion may stimulate speculation one way or the other. His point would be that although a Bill had started all right, in the course of the Bill a discussion of that kind was started and there would be no means of stopping it.

Sir *Hari Singh Gour*.

11,889. There is a means of stopping it because in Standing Orders the President of the Assembly cannot allow a discussion which enlarges the scope of the Bill. That is covered by the Standing Orders of the Legislative Assembly ?—

Yes. Anyhow, if I may, I would like to look into this point and consult my Constitutional advisers about it.

Lord *Snell*.

11,890. Would it not happen, if Lord Derby's suggestion were operative, that the Governor could at any time prevent the exploration of a subject which a discussion afforded ? He would say : "If this goes on I shall do so and so". Therefore, it would seem to restrict the free inquiry into the possibilities of a question ?—I am inclined to think that our proposals do cover the contingency in mind, anyhow where danger might be involved. After all, the Governor-General has very free powers in the field of his special responsibilities, and it might well be in the kind of case that I have mentioned that he could intervene under his special powers in the interests of the credit of India, but upon points like that I should like to consult my advisers.

Lord *Rankeillour*.] The point made by Lord Derby amounts to no more than the power the Speaker has at present in the House of Commons of ruling that a Bill by amendment has gone beyond its scope and can no longer proceed.

Sir *Austen Chamberlain*.

11,891. I do not think that one can treat this quite as a matter to be settled by the technicalities of our procedure, as to whether a particular proposal is within the scope of the title of the Bill. Let me put a specific case : A Draft Bill is submitted to the Governor-General and he says : "I cannot allow a discussion to take place on this Bill. I cannot allow this Bill to be introduced, because of such and such a clause". The Clause is thereupon withdrawn and the Bill is introduced without it. To that, the Governor-General assents. In the course of the discussion, the very Clause to which he took exception in the first instance is moved as an amendment : I assume it is within the title and scope of the Bill—the discussion which he intended to prevent, I submit, he has no power of preventing under your proposals as they now stand. All that he can do is to intimate that if that Clause is inserted in the Bill he

will refuse his assent ; but the discussion which he was anxious to prevent would have taken place ?—Yes. I will certainly take into account what Sir Austen has said. As I said just now to Lord Derby, I should like to look into this point in connection with the power of the Governor-General under his special responsibilities. I think it is possible that we may be covered there, but I will look into the point.

*Marquess of Salisbury.*

11,892. The Secretary of State, when he considers it will remember, will he not, that the remedy of refusing his assent to the whole Bill may import so much consequences on the other provisions of the Bill that the Governor-General might easily shrink from doing so merely in order to correct the iniquity of one clause. I hope he will realise that this big method of refusing the whole Bill is one which might not be always available for him ?—Yes. I should not admit that it will not always be available to him, but I would agree with Lord Salisbury that it is a very big weapon and one only wishes to bring it into action in the last resort.

*Earl Winterton.* May I ask a question on the last point raised by my noble friend, Lord Salisbury ? Is there not a further safeguard under Proposal 90 ? That also deals with the point which Sir Austen Chamberlain put, in the Second situation which he visualised. Section 90 is "Any Act assented to by the Governor or by the Governor-General will within 12 months be subject to disallowance by His Majesty in Council." So, if, therefore, the point which Lord Salisbury put, or if the situation put by Lord Salisbury developed or the situation put by Sir Austen Chamberlain some time ago arose—

*Earl of Derby.*

11,893. No ; that does not deal with the point Lord Salisbury raised ?—Lord Winterton is right to this extent that paragraphs 89 and 90 must be all read in connection with these Clauses as an additional safeguard.

*Sir Austen Chamberlain.*

11,894. But the Secretary of State will see that if, owing to the fact that there

is so much that is valuable in the Act as a whole and, indeed, necessary, the Viceroy hesitates to refuse assent to the whole because of one particular clause that reasoning will affect the Secretary of State's action just as much as the Viceroy's ?—Yes.

11,895. That is Lord Salisbury's point ?—Yes.

11,896. And is quite distinct from what, I think, was Lord Derby's point and mine, which was that a discussion which the Viceroy intended to forbid and had forbidden on introduction as a condition of his assent to the introduction, might take place on an amendment subsequently ?—Yes. I am seized of both those issues and they are important issues. Sir Austen, no doubt, has in mind the provisions in paragraph 28.

*Earl of Derby.*

11,897. That does not quite cover the point which has been raised, but, as the Secretary of State says, he will kindly look into it, may I leave it like that ?—Yes.

*Mr. M. R. Jayaker.*

11,898. May I ask the Secretary of State's attention to Proposal 52, which will meet with this point where power is given to the Governor-General to make rules of Procedure : "The Procedure and conduct of business in each Chamber of the Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber ; but the Governor-General will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules—(a) regulating the procedure of and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments or any other special responsibilities with which he is charged." He may make a rule under this power that all amendments of the character contemplated in this present question will not be moved subject to certain restrictions, and he has power to make special rules affecting the conduct and procedure of matters relating to special responsibilities in the Reserved Departments. He can act under that and make rules ?—That was the reason that I gave the answer that I



did to Lord Derby just now. He has really got to take into account all the various provisions.

*Marquess of Salisbury.*

11,899. I understand the Secretary of State is going to be good enough to let us have some little note to explain how the Government really intends these clauses to work. I know they were very intricate. I hope the Secretary of State will realise that I did no more than my duty to call his attention to the question?—I am much obliged to Lord Salisbury for raising the point. That is just the reason why we are all here, that such points and similar points should be raised.

11,900. He will let us have some note to explain the two points, what I may call the inadvertence point and the amendment point?—Yes.

*Marquess of Salisbury.* And there is another point which I am going to call attention to in a moment.

*Archbishop of Canterbury.*

11,901. Before we pass from that, Secretary of State, there is still a little difficulty which has been raised about which I am not clear. Supposing all the consents necessary have been obtained and the Act is passed and has not been challenged, and then later on someone affected raises the point that after all it was repugnant to an existing Act of Parliament, then, as was said, recourse must be had to the Courts. But what Court would decide an issue of that kind?—Would there be an issue of that kind for a Court? Would not the definition of repugnancy rest with the Governor-General and the Secretary of State?

*Marquess of Salisbury.* No; surely not.

*Sir Hari Singh Gour.* No. Even under the present law if it happens to be repugnant to an Act of Parliament any Court of law has got the jurisdiction to declare that it is so repugnant, and to the extent that it is repugnant, it is *ultra vires* and inoperative.

*Lord Eustace Percy.* Surely that is not the case. The question is: The Court decides that it is repugnant to an existing Act of the Imperial Parliament;

but, under these proposals, if it has been passed and given assent to by the Indian Legislature, it will override that Act of Parliament.

*Sir Hari Singh Gour.* No.

*Lord Eustace Percy.* Yes; surely that is so.

*Mr. Zafrulla Khan.* Indeed, it will.

*Sir Hari Singh Gour.* The question of repugnancy to be determined by the Court will only arise when an Act is passed by the Indian Legislature.

*Mr. Zafrulla Khan.* But supposing it finds it is repugnant to an Act of Parliament, but it is not repugnant to any of the Acts or matters affected in paragraph 110, then it will say: "This required prior assent." Not having received prior assent, it would have been invalid, but that defect has been cured by subsequent assents, and, therefore, it is valid.

*Sir Hari Singh Gour.* You are only stating a specific case.

*Marquess of Reading.* May I ask one question, my Lord Chairman, upon this? I do not want to intervene, if I can help it, in a debate of this kind which threatens to be a debate between lawyers. Is not this after all a question which will have to be considered and proper attention given to it and advice taken upon the subject? Is it a matter if it is in legal doubt to be discussed between us across the floor? Can we get any further with it?

*Marquess of Salisbury.* I do not want to press the matter any further. All I wanted was the Secretary of State with his advisers to consider these points. I think it is clear that the Committee would wish that repugnancy should be always challengeable unless there is the prior consent of the Secretary of State it ought not to be possible to vary an Imperial Act of Parliament which slipped through by simple inadvertence.

*Sir Hari Singh Gour.* Even the previous consent of the Secretary of State will not cure the repugnancy if it is there.

*Marquess of Salisbury.*

11,902. That is a matter we are not sure about?—I can say no more than that this type of question has been very

carefully considered by the Constitutional lawyers in Whitehall and I will discuss it again with them. I think it may well be that somewhere or other in the White Paper proposals we meet the kind of contingencies that have been suggested; but, anyhow, we will look into it and we will circulate a note to the Committee.

Lord Irwin.

11,903. Might I ask the Secretary of State when he does circulate that note if he would, for the benefit of the Committee, and indeed of myself (I ought to know it, but do not) outline exactly what is the present position of the Governor-General with regard to an amendment that may be introduced in the kind of form that Sir Aastén Chamberlain anticipated that itself, if it had been in the shape of an original Bill, would have required previous sanction?—Yes.

Earl Winterton.] I wish to place on record one thing. I hope my noble friend, Lord Salisbury, will not think I am discourteous when I say that I demur to the use of the phrase he has just used. No Member can bind the Committee until the Committee has come to a decision. My noble friend is entitled to ask for an opinion. He used a phrase, and I do not agree to his views on this point, and I do not assent.

Marquess of Salisbury.] I apologise. I ought not to have used the phrase. I did gather that that was the general impression, but I am wrong, and I will not say another word.

Earl Winterton.] It may be, but it has not been put to the vote.

Marquess of Salisbury.] No.

Archbishop of Canterbury.

11,904. The Secretary of State will consider in his note the further point that supposing a challenge is made of an existing Act on the ground that it was repugnant what Court will be available to decide that issue?—Yes.

Marquess of Salisbury.

11,905. Now, Secretary of State, may I leave what I may call the technical part and go to a substantial point? The authority which is going to allow this legislation to be introduced is the Governor-General not the Secretary of

State, but, I presume the Governor-General is always in touch with the Secretary of State in matters of this kind?—The Governor-General at his discretion.

11,906. No doubt, but I do not press that. In small matters it might easily be that the Governor-General would not think it worth while to consult the Secretary of State. However, let us pass that by. At any rate, the Governor-General is the authority. I suppose the Secretary of State will say that the Governor-General, through the Secretary of State, is responsible to Parliament?—No.

11,907. I am now, if I may say so, dealing with substantial matters, not small matters?—Yes.

11,908. Substantial modifications of an Imperial Act of Parliament?—Yes.

11,909. The Governor-General assents to its introduction. Is the Parliamentary control over that really secured? There is no doubt that the Governor-General would not act except with the leave of the Secretary of State in a matter of importance, I mean, but both Houses of Parliament here would not have authority. The House of Commons no doubt would, but the Governor-General might assent, with the leave of the Secretary of State, to important modifications of the Imperial Statute without any assent from the House of Lords at all?—The position is just the same now.

11,910. But then we are dealing with a very different situation in the future. There is going to be a semi-independent Legislature with a responsible Government in India, and they are apparently to have the power, with the consent of the Governor-General, to vary Imperial Statutes, and the British Parliament is not to be consulted at all?—I would have thought myself that in cases of this kind—Lord Salisbury said himself in his question that he was talking of cases of substantial importance.

11,911. Yes?—I would have thought that cases of that kind cannot be dealt with without the full knowledge of Parliament. These things do not happen in a minute or in an hour, or in a day. These big questions presumably excite a good deal of controversy both

in India and here. Parliament is fully seized of what is going on. The Press is fully seized of it. I should have thought the control of Parliament and the Secretary of State would have remained very effective.

11,912. The Secretary of State will see the distinction, will he not? These Acts which are to be susceptible of modification by the Indian Legislature are Acts assented to by both Houses of Parliament after the full procedure which we go through in forming an Act of Parliament. They are to be modifiable with the consent alone of the Governor-General acting with the consent of the Secretary of State. That is a very different thing. Both Houses of Parliament are not consulted at all. One House of Parliament might check the Secretary of State if they thought he was going wrong. The other House of Parliament might be entirely ignored?—But if the questions were of such importance as Lord Salisbury suggests then surely the way to deal with them would be to extend the list in paragraph 110.

11,913. No?—That is a matter for the Committee to consider. My own view is that we have covered these important questions under paragraph 110.

Sir *Hari Singh Gour*.] May I draw the attention of the Secretary of State to a decision arrived at at the Third Round Table Conference dealing with the question raised by the noble Lord? It is pointed out at page 60 of the proceedings of the Third Round Table Conference: "The existing Government of India Act embodies various provisions, all taken from earlier Acts, which place limitations upon the powers of the Indian Legislatures. The general effect of these provisions is *inter alia* that any legislation passed in India, if it is in any way repugnant to any Act of Parliament applying to India, is to the extent of the repugnance null and void. It was felt that the form of these old enactments would be inappropriate for adoption as part of the Constitution now contemplated—a constitution very different in character from that of which they originally formed part; and that in substance, also, they would be unnecessarily rigid. There are certain matters which, without question,

the new Constitution must place beyond the competence of the new Indian Legislatures and which must be left for Parliament exclusively to deal with—namely, legislation affecting the Sovereign, the Royal Family and the Sovereignty or Dominion of the Crown over British India; moreover, the Army Act, the Air Force Act and the Naval Discipline Act (which, of course, apply to India) must be placed beyond the range of alteration by Indian legislation; and it may also be found necessary to place similar restrictions on the power to make laws affecting British nationality. But, apart from these few matters, it was held that the new Indian Legislatures, Federal or Provincial, can appropriately be given power to affect Acts of Parliament (other than the Constitution Act itself) provided that the Governor-General acting 'in his discretion' has given his previous sanction to the introduction of the Bill and his subsequent assent to the Act when passed: in other words, the combined effect of such previous sanction and subsequent assent will be to make the Indian enactment valid even if it is repugnant to an Act of Parliament applying to India."

Marquess of *Salisbury*.] We have gone back to repugnance, have we?

Mr. *Zafrulla Khan*.] Will you read on?

Sir *Hari Singh Gour*.] Yes. "In his decisions on the admissibility of any given measure the Governor-General would, of course, on the general constitutional plan indicated in the Report on the Special Powers of the Governor-General and Governors, be subject to directions from the Secretary of State. Beyond a provision on these lines no further external limitation on the powers of Indian Legislatures in relation to Parliamentary legislation would appear to be required."

Marquess of *Reading*.] What page is that?

Sir *Hari Singh Gour*.] Page 60 of the proceedings of the Third India Round Table Conference.

Mr. *Butler*.] I think it is page 63 of the English edition.

Mr. *Zafrulla Khan*.] It is in that green book.

*Lord Eustace Percy.*

11,914. Secretary of State, you made a slip just now, did you not, when you said that the position was the same at present. I do not think you mean to say that. At present, even with the consent of the Secretary of State, the Indian Legislature would have no power, for instance, to amend the Merchants Shipping Act?—Lord Eustace is quite right. I was speaking in rather general terms, and my statement was not accurate in details.

*Marquess of Salisbury.*

11,915. I am sorry to have detained the Committee so long, but may I just call attention to this point. I do not want to press it. I think the point I have suggested to the Secretary of State about the want of control by both Houses of Parliament is a very material one, and an almost vital point in certain respects, but I do not want to press it. He quite sees the point?—Yes.

11,916. May I just mention Paragraph 120 now?—Yes.

11,917. That extends the procedure of No. 119 to the Provincial Legislatures?—Yes.

11,918. The Governor-General is still the assenting party; it is not the Governor; it is the Governor-General still, but it is the Provincial Legislature. I would ask the Secretary of State to remember that difficult though it may be to detect repugnance in the case of Central Legislation, the difficulty is multiplied when every Provincial Act has to be equally watched, because each of the Provincial Legislatures may make the same mistake about legislating repugnant to an Imperial Statute and the Governor-General's attention may not be called to it, and the same difficulty about amendments may arise in the Provincial Legislatures. Who is to tell the Governor-General when all these things are going on in the Provincial Legislatures?—I do not believe myself there is going to be the kind of difficulty that Lord Salisbury suggests.

11,919. It is evident it will multiply the difficulty very much?—Would Lord Salisbury repeat that question?

11,920. It is clear that the difficulties to which the members of the Committee have called attention, of inadvertence and of amendments repugnant to an Imperial Act of Parliament will be multiplied when you consider that the difficulties apply to every Provincial Legislature just as they do to the Central Legislature?—No, I would not agree. The difficulties are much less in the Provincial Legislatures. The scope of their powers is much more restricted and I think it will be seen that in the Provincial field there is far less likelihood of cases of repugnance than there would be in the Federal field. I think, therefore, the cases that Lord Salisbury has in mind are less likely to arise in the Provinces.

11,921. That may be so, of course?—I think when they do arise, because they are rarer, greater publicity will attach to them, and I would think that administratively there would be no great difficulty in following the course of events. At present there is a considerable amount of legislative work done in the Provincial Councils. We follow it very closely here. I know I think pretty well what is happening in every Provincial Council. We have reports of their Bills. That would continue. The Governor of the Province would be the agent of the Governor-General. He would be following these events with great care, and I would have thought administratively there would not be the kind of difficulty Lord Salisbury suggests.

11,922. The Secretary of State is always an optimist and I am very glad he is?—I might retort that Lord Salisbury is always a pessimist.

*Marquess of Salisbury.]* Are you very glad of that too?

*Marquess of Reading.]* May I make one suggestion on that?

*Marquess of Salisbury.]* May I put one more question?

*Marquess of Reading.]* Certainly.

*Marquess of Salisbury.]* The Secretary of State will realise that in these difficult matters the Governor will be furnished with no sufficient staff; he will not have a regular lawyer upon his staff; he will have a very diminished staff, we are told.

Earl of *Lytton*.] He will have a legislative department with experts to advise him on all Bills that are introduced.

Marquess of *Salisbury*.] Will he have that staff after the change ?

Earl of *Lytton*.] Surely.

Archbishop of *Canterbury*.] Provision is made for him to have what staff he pleases.

Marquess of *Reading*.] We always have to remember in the case that was put by Lord Salisbury, of the Act possibly getting through and getting the assent of the Governor or Governor-General, that there is still the provision of paragraph 90, and that is, that notwithstanding that the Act has been assented to by the Governor or the Governor-General it will, within twelve months, be subject to disallowance by His Majesty in Council.

Marquess of *Salisbury*.] Yes ; but that is the whole Act.

Marquess of *Reading*.] I am only pointing out that it is an additional safeguard. That is all.

Marquess of *Salisbury*.

11,923. I only wanted to point out that all these difficulties of the Central Legislature are repeated in the Provinces and exactly in the same way the want of Parliamentary control of the Imperial Parliament which might be called attention to in the case of the Centre will be true in the case of the Provinces, too, so that the Imperial legislation might be modified with the assent of the Governor-General by the Provincial Legislature without the assent of the House of Lords ?—Lord Salisbury has drawn his own conclusions from his questions and my answers. No doubt each Member of the Committee will draw his own, too.

Sir *Austen Chamberlain*.] I have no questions, excepting to reserve a possible right to ask questions.

Lord *Irwin*.] I do not want to ask the Secretary of State a question, but I want to clear up a point to which Lord Salisbury has called attention. I do not quite follow in what respect he conceives that the control of the House of Lords in all these matters will be better or

worse in future than it is to-day. He is contemplating a state of affairs in which the Governor-General and the Secretary of State behind him have sanctioned some project affecting an Imperial Act which he might deprecate. We all know what would be the procedure in Parliament at the present time if that were done, and it may well be our view that the House of Lords has very limited power in regard to it, but I do not quite follow in what respect he conceives that position to be worse under the future conditions.

Marquess of *Salisbury*.] It is quite clear that the situation, when you have a responsible government putting great pressure upon the Governor or the Governor-General is very, very different from what it is at the present time. These matters which are repugnant to an Imperial Act of Parliament might easily be pressed through by Indian public opinion, and then they would be assented to. The introduction of them would be assented to by the Governor-General acting with the consent of the Secretary of State and the two Houses of Parliament might be ignored. In the case of the one it would be fatal ; in the case of the other they might, in England, turn the Government out.

Earl of *Lytton*.

11,924. I think some confusion has perhaps arisen from a discussion of these Clauses 119 to 121 on the assumption that they introduce a new procedure. Is it not true, Secretary of State, that the effect of these Clauses is merely to limit the necessity for the previous sanction of the Governor-General or the Governor to certain cases specified in these Clauses instead of, as at present, to the introduction of all Bills ? Is it not the case that at the present time all legislation has to obtain the sanction of the Governor-General before it is introduced ?—Yes ; certainly.

Sir *Hari Singh Gour*.

11,925 No ; not all ?—I beg your pardon. Before it is introduced, did you say ? Only the questions enumerated in Section 67 of the Government of India Act.

Earl of Lytton.

11,926. Yes. For those Clauses all legislation has to obtain the consent of the Governor-General?—Yes.

11,927. And the effect of Clauses 119, 120 and 121 is to reduce that number?—It reduces it in one direction. It does extend it, though, in the matter of Acts of the Imperial Parliament now governed by Section 65.

11,928. But the procedure of refusal or granting consent to the introduction of legislation exists to-day, and, therefore, when questions are asked as to how the Governor-General or the Governor shall know whether these conditions specified are violated or not, surely the answer may be drawn from the present experience of a Governor-General or a Governor. He has his legislative department, he has his advisers, and it is the business of those advisers to scrutinise all Bills to see whether they raise such points as will necessitate the refusal of the sanction to introduction. Is that not so?—It is true that we have based our proposals generally upon existing procedure.

11,929. And in so far as the Governor-General and the Governor under the Constitution Act will still have certain duties to refuse consent to a Bill in certain circumstances, am I not right in assuming that both the Governor-General and the Governor will continue to have advisers who will scrutinise legislation to see whether the points raised in these paragraphs are to be found in any particular Bill, and advise him about it?—I imagine the practice will be very much the same. One of the Constitutional differences—and the Committee should not ignore this fact—is that the legislative department presumably will be a part of the Federal or the Provincial Government. That, of course, does make a Constitutional difference. That does not exclude the possibility of the Governor-General or the Governor obtaining what advice he requires of his own.

11,930. But it would not be, would it, beyond the competence of the legislative department which advises the Federal Government also to advise the Governor-General in respect of such functions as may be raised by these paragraphs?—I am expecting that the Legislative De-

partment would give advice of that kind. It is, of course, conceivable that you might have an acute difference between the two sides of the Government. I hope it will not take place, but it is conceivable that there might be that difference. If so, the Governor-General must be competent to take his own decision. In a case of that kind, presumably it would be a controversy of substantial importance with all the publicity attaching to it and with a very close scrutiny taking place from Whitehall and the Imperial Parliament.

Lord Eustace Percy.] If Lord Lytton will allow me to intervene, there is this practical difference, too, surely at the present moment. The Legislative Department has got to advise the Governor-General whether a Bill which it is desired to introduce affects certain specified things, specified in Section 27 of the Government of India Act, and that is a perfectly simple job. But now they will have to advise the Governor-General whether this proposed legislation contravenes any Imperial Statute whatsoever.

Mr. Zafrulla Khan.] Affecting India.

Lord Eustace Percy.

11,931. Affecting India, which, after all, is practically a much more difficult job, is it not?—I agree.

Earl of Lytton.

11,932. One more question on the point raised by Lord Derby. Would not his point be met by requiring the consent of the Governor-General not merely to the introduction of any legislation which does the various things set out in that paragraph but also to any amendment to a Bill which would have the same effect? Would there be any objection to including those words?—I will certainly consider Lord Lytton's suggestion, and I will look into it with the question generally.

Earl Winterton.

11,933. I only desire to ask the Secretary of State one question, reverting to the point put by Sir Austen Chamberlain. I understand Sir Austen Chamberlain to suggest that under Section 121. this situation might arise; in which the Governor-General had in error failed to

notice that a Bill could not have been introduced—that is to say, had failed to withhold his consent, and then afterwards, in error also, had given his assent. I may say that I think it is rather an extreme case, but that I understand was the point put by Sir Austen Chamberlain. Would not that be effectively covered for all practical purposes by Section 90, which says: "Any Act assented to by the Governor or by the Governor-General will within 12 months be subject to disallowance by His Majesty in Council"? In other words, may I put the point in this way. While it is conceivable that a situation might arise in which the Governor-General in error both failed to withhold his consent and afterwards gave his consent, it would be unlikely that this would not be noticed by the Secretary of State here and by his advisers?—I agree with Lord Winterton, but, as I say, I will bring up these points in the Note I am going to circulate.

*Sir Austen Chamberlain.*] I think my point was answered to my satisfaction by Lord Reading. Provided the Secretary of State concurs with Lord Reading, which I imagine he will do, I will be satisfied.

*Earl Winterton.*

11,934. But I was not satisfied?—I will try to satisfy everybody.

*Earl Winterton.*] I was anxious to get the answer on the point which Sir Austen Chamberlain put. That is all I have to ask.

*Mr. Cocks.*

11,935. Secretary of State, if a Governor gives his prior assent to a measure which subsequently in the course of discussion is amended in such a way as to contravene the stipulations laid down in paragraph 119, it is always possible for the Governor-General to remit the Bill to the Chambers asking them to reconsider it. If so, would not that meet the point raised by Lord Derby?—That was one of the points which we were discussing to some extent just now, was it not? It is so. Paragraph 88 also bears upon proposals of that kind.

*Lord Snell.*] Secretary of State, when you are looking into this matter, will you bear in mind the point that I put which has been rather intensified by Lord Lytton's suggestion that the amendments might be vetoed before discussion? Is it not possible that it will happen in the legislature, as frequently happens in our own, that amendments serve the very useful purpose of exploration, and are often introduced with the connivance or good-will of the Government itself, in order that a subject may be enquired into and opened up. I should expect that it would cause the greatest dissatisfaction if that sort of enquiry were restricted.

*Dr. B. R. Ambedkar.*] The whole object of these Clauses is to stop the discussion which is going to affect the appeal of special responsibilities. That is the underlying purpose of these Clauses.

*Sir Hari Singh Gour.*] That is not to stop discussion?

*Dr. B. R. Ambedkar.*] Then what is the object of previous consent?

*Witness.*] I was not sure whether Lord Snell was expressing his opinion or whether he was putting a question.

*Lord Snell.*

11,936. I was asking you if you would kindly look into the matter at the same time?—Yes; at the same time.

*Mr. Morgan Jones.*

11,937. As I understand it. Sir Samuel Hoare, the position in future will be that the Indian Legislature will not in any way be able to amend the Constitution Act of its own free will?—Yes save as provided in the Act.

11,938. Might I ask whether the Secretary of State has contemplated that as experience grows of the operation of the Constitution Act it might be desirable for the Indian Legislature to express itself as to possible lines of developments. What procedure would be open to them to express their views in that matter?—It would be possible, I suppose, to have a resolution upon which a discussion could be based.

11,939. Just resolutions?—Yes.

11,940. On the second point which Lord Snell raised a moment ago, the

Secretary of State would agree that the Governor-General will already be heavily armed with powers of veto and reservation, and so on, whenever he feels that the Indian Legislature is liable to pass them by discretion, as we call it?—Yes.

11,941. Would not the Secretary of State therefore agree that to offer to the Governor-General the right to intervene in the middle of a discussion of a Bill because he apprehends the effect of certain amendments proposed is a little dangerous in so far as it might bring the Governor-General into conflict unnecessarily with the Legislature, and too frequently perhaps?—I am not expecting myself that cases of this kind will often arise, for this reason: The cases of importance are so obviously covered either by paragraph 110 or by the powers that the Governor-General and the Provincial Governors have in the field of their special responsibilities. I would therefore take the view that the exercise of these powers will be infrequent, and I am not sure whether I agree with Mr. Morgan Jones that to intervene at one period in a discussion is likely to create more controversy than intervention in another period; but, after this discussion this morning, I will take these points of view into account in the note that I will circulate.

11,942. Thank you; then I will not ask anything further upon that. May I call the attention of the Secretary of State to the last part of the sentence in paragraph 119? The Indian Legislature may not discuss matters relating to "the procedure regulating criminal proceedings against European British subjects?" I would like to get to know precisely what this means in view of the incident which has happened in the Empire recently?—Yes. I will tell Mr. Morgan Jones and the Committee what is the position. The position is this: It is a question which has in the past stirred up a very great deal of bitterness. Indian administrators will remember that in the last generation it stirred up acute bitterness here and in India. Fortunately, feeling is now much less heated on this subject and a compromise has been accepted. Sir Malcolm Hailey could tell us the details about that compromise because I think he was influential in bringing the European community and the Indian communities

together upon the subject. We were so anxious that this controversy should not be revived, in view of the fact that the compromise is working not unsatisfactorily, that we did put this issue into the list of questions that could only be discussed with the previous sanction of the Governor-General.

Marquess of Reading.

11,943. That compromise Sir Tej Bahadur Sapru at that time had a considerable part in; I think it was in 1924?—Yes.

11,944. And then a Bill was passed to that effect as a result of it. The whole matter was discussed during the time of my holding office and Sir Malcolm Hailey had to do with it also, but the effect of it was that the compromise was reached between both Indian and European members and that a Bill was passed which was carried into effect, and I do not think any question has arisen about it since. I think that is right, is it not, Sir Malcolm?—(Sir *Malcolm Hailey*.) Yes; that is so—1923.

Mr. Morgan Jones.

11,945. I am glad to hear there has been a compromise, but I am really entirely in the dark as to the nature of it, and I am really disturbed about it?—(Sir *Samuel Hoare*.) I can tell Mr. Morgan Jones in a sentence what is the nature of the compromise; Sir Malcolm will correct me if I am wrong. Criminal cases in which Europeans are involved: First of all, there is a procedure under which they are tried by two magistrates, and, secondly, in the jury, which is a mixed jury, the accused has a majority of his compatriots, European, if he is a European; Indian, if he is an Indian. (Sir *Malcolm Hailey*.) It withdraws the previous bar under which no European subject could be tried by an Indian Judge.

11,946. That is withdrawn?—(Sir *Samuel Hoare*.) That is withdrawn.

Sir *Hari Singh Gour*.] In case there should be any misunderstanding on the subject, I happen to be one who took an active part in the discussion which culminated in the amendment of the Criminal Procedure Code. It was not a compromise but an understanding reached



between the representatives of the two communities, in which both communities had to give and take, but it was not a compromise in the strict legal sense of the term.

Marquess of Reading.] Is not a compromise an understanding?

Sir Hari Singh Gour.] The fact is that negotiations took place, and we took counsel together and, without the consent of the other party; and the other party without our consent accepted the situation as it was presented to the Legislature in the amending Act of 1923.

Earl of Derby.] In other words, it was accepted by both sides and has worked perfectly well ever since.

Sir Hari Singh Gour.] I do not know whether Sir Henry Gidney would like to add anything upon that subject?

Lieut.-Col. Sir H. Gidney.] I was a Member of that Committee, but I shall reserve my remarks, my Lord Chairman, until a later stage of the Proceedings.

Lord Rankinour.

11,947. There is one point, Secretary of State, which I do not think quite came out in the beginning of the discussion. I take it, first of all, that the effect of Nos. 110 and 119 taken together is that, unless debarred by No. 110, the Legislature with the consent of the Governor-General can amend any Act of this Parliament?—(Sir Samuel Hoare.) Yes.

11,948 One of the provisions of No. 110 is to debar anything repugnant to or contrary to the Constitution Act, but there are a certain number of perhaps borderline matters which I will illustrate in a moment which I am not sure would be affected by that or not. For example, if I might ask the Secretary of State to turn to page 117, Item 50, it says there: "Police (including railway and village police) except as regards matters covered by the Code of Criminal Procedure." The point I want to put is: Does that, by implication, make the Code of Criminal Procedure a part of the Constitution Act and would it not therefore be amendable under the operation of Proposal 110?—No. This is an item in the list of subjects that are exclusively provincial.

11,949. Quite so, but it there brings in the Code of Criminal Procedure as a

limiting power on the Provincial Governments, and I submit that it may be that that makes the Code of Criminal Procedure which is assumed to be operating a part of the Constitution Act?—No; the Code of Criminal Procedure is not an Imperial Act.

11,950. Was it not passed under the Statute of the sixties?—It is an Indian Act.

11,951. It is a purely Indian Act?—It is a purely Indian Act.

11,952. I beg your pardon; I thought it was an Act passed after the Mutiny?—No, it is a purely Indian Act.

11,953. Then that answers that question?—Yes.

11,954. There is another question under Proposal 189. It says on page 84: "At the expiration of five years from the commencement of the Constitution Act, a statutory inquiry will be held into the question of future recruitment"?—Yes.

11,955. "The decision, on the results of this enquiry, with which the Governments in India concerned will be associated, will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament." Will that decision, when taken, form part of the Constitution?—Yes. Lord Rankinour I assume means: Will it or will it not be alterable by an Indian Government?

11,956. Yes—by an Indian Government?—My answer is: No, it will not be alterable.

11,957. And no doubt there will be other cases in which decisions are taken in pursuance of some section of the Constitution Act and those decisions will form part of the Constitution?—That is so.

11,958. The only other thing I want to ask is: Is there any provision for either House of Parliament moving an Address to the Crown here praying His Majesty to withhold his assent from any Indian Bill? Would it be possible?—Would it be possible now, or under these proposals?

11,959. Now?—I could not say offhaad without consulting the constitutional experts. I will ask them about it.

11,960. I would like to know whether there is the power and, if so, what opportunity there would be. If a prayer can be moved on the address I presume it can be done after the ordinary hours of business in the House of Commons and at any time here?—I will look into Lord Rankeillour's point.

Lord Rankeillour.] Thank you; that is all I want to ask.

Marquess of Zetland.

11,961. I have only one question I want to ask the Secretary of State, and that is with regard to parts of Clause 119. Under that clause the consent of the Governor-General will be required to the introduction of a Bill affecting the coinage and currency of the Federation or the powers and duties of the Federal Reserve Bank in relation to the "management of currency and exchange." I do not quite know what is involved by the word "management". Will it be within the competence of the Legislature to introduce and discuss, for example, a Rupee Ratio Bill, and if it is within their competence would the introduction of such a Bill require the prior consent of the Governor-General?—It would certainly require the previous assent of the Governor-General.

11,962. But it would be within the competence of the Legislature?—Yes.

11,963. I mean, it would not infringe upon the powers of the Reserve Bank?—No; it would be within the competence of the Legislature under No. 119. It is not one of the subjects excluded altogether. The subjects excluded altogether from the competency of the Legislature are under No. 110.

Lord Rankeillour.

11,964. But some of these might be put into the Act as part of the Constitution, and they would become so?—That is so.

Marquess of Reading.] You mean, if they were put into No. 110?

Lord Rankeillour.] I mean the reserved control of the Governor-General presumably will be put into the Act and that would bring it into the operation of 110.

Lord Irwin.] As part of the Constitution Act?

Lord Rankeillour.] Yes.

Archbishop of Canterbury.

11,965. I wish to ask only one question for information, Mr. Secretary of State. It is with regard to both Nos. 119 and 120. I suppose legislation affecting religion or religious rites and usages would include, for instance, marriage laws or the amendment of marriage laws, because it is very wide?—It is very difficult to be precise. I think His Grace will recognise the necessity of a rather wide discretion. On the one hand, we do not wish to exclude from the purview of the Legislature questions of social reform. On the other hand, we do not want to depart from the continuous policy that has been adopted in India since the beginnings of the British association, namely, to do what we can to prevent religious controversy bursting forth. I think, taking the two views into account, the view, on the one hand, of the orthodox Hindus as expressed by them the other day in their evidence, namely, that these questions should be excluded altogether from the Legislature, and the other point of view of the reformers, who would like no restriction put upon their discussion at all or upon legislation connected with them, we have come to the conclusion that the best course is to adopt the compromise of allowing a discretion in the hands of the Governor-General as to whether questions of this kind should or should not be discussed; but, as I say, we do not wish to debar the Legislature from dealing with questions of social reform; at the same time, we do not want to allow India to be plunged into a period of acute and bitter religious controversy.

11,966. It would be for the Governor-General or otherwise the Governor to decide whether or not these contingencies were likely to arise?—Yes.

11,967. Then one more matter of drafting for intelligent understanding in No. 120: I presume that the words in the last sentence: "these latter subjects" mean subjects affecting religion or religious rites and usages. It is a small point. It is only the interpreta-

tion of "latter"?—Yes ; it refers to religion and religious rites.

11,968. Then in these matters, apparently, a double consent will be necessary : that of the Governor-General and also that of the Governor?—It is the Governor in the Province, the Governor-General at the centre.

Archbishop of *Canterbury*.] But the Governor-General at the centre on the first part of No. 120 will be required to give his decision on these matters because the sentence : "or which affects religion or religious rites and usages" refers to the consent of the Governor-General to the introduction of these matters into the Provincial Legislature.

Mr. *Zafrulla Khan*.] It exempts them. Marquess of *Salisbury*.] It is all subject to "other than."

Archbishop of *Canterbury*.

11,969. "Other than legislation?"—(Sir *Finlatter Stewart*.) The Governor is concerned in this matter only with his own ordinances and with Bills concerning religious matters introduced into the Provincial Legislatures.

Marquess of *Reading*.] It is all governed by the words "other than" and that excludes them.

Archbishop of *Canterbury*.] It is a question of drafting, but I should have thought obviously it implies that this is always a matter in which the consent of the Governor-General is required for introduction of legislation into the Provincial Council ; then this was added to say that in these particular matters the consent of the Governor was required.

Marquess of *Reading*.

11,970. May I suggest to the Secretary of State that the words "these latter subjects" refer not only to religion and religious rites and usages but also to legislation which is repugnant to the Governor's Act or ordinance. It must not be confined to religious rites or usages?—(Sir *Samuel Hoare*.) Yes. I admit that with the punctuation and the wording as they are there is some obscurity. We must put it right.

Archbishop of *Canterbury*.

11,971. Then that point of drafting, Secretary of State, will be noted?—Yes.

Sir *John Wardlaw-Milne*.

11,972. In connection with No. 119, wanted to ask the Secretary of State whether he did not think there was a little danger in the use of the word "management" of currency ; whether he does not think that could be altered to cover the policy without the details of the management of the currency?—Yes ; I will look into that point. As I say, this is not intended to be a final draft in any way.

Sir *Manubhai N. Mehta*.] In regard to Proposal 119 will the Secretary of State kindly let me know, amongst these subjects which are debarred and for which the previous sanction of the Governor-General is necessary, whether there is any objection to adding "treaty rights and privileges of the States." The Viceroy and the Governor-General have special responsibility. Amongst those of the States are included, and if most of the Governors and Viceroys' special responsibilities are included here, is there any objection to adding, "treaty rights and privileges of the States?" I will illustrate my meaning by one example. In the Civil Procedure Code there is one provision that no suits against Indian Princes can be entertained without the previous sanction of the Governor-General. Supposing one Province passes some legislation in which this is omitted, Princes might be liable to arrest before judgment, or their property in British India might be liable to seizure if such a provision was brought about. I am therefore anxious that the treaty rights and privileges of Indian rulers might be saved not only in No. 119 but also even in Section 110, because we have seen in No. 119 the effect of mere absence of the Governor-General's previous assent may not invalidate it. I therefore ask the Secretary of State kindly to include this also among the special responsibilities.

Mr. *M. R. Jayaker*.] Are not treaty rights outside the scope of the Federal Constitution?

Sir *Manubhai N. Mehta*.

11,973. I wanted that in No. 110?—Sir *Manubhai* has raised an issue that we have discussed once or twice before and it is well worth the attention of the

Committee. My answer to him is this : We have purposely not included the category of treaties either in No. 110 or in No. 119 for the very reason that Mr. Jayaker has just mentioned, namely, that treaties are outside the Federation altogether. They are in the field of paramountcy, and our very definite view is that in the interests of the States, just as much as in the interests of the Constitution generally, it would be a mistake to include treaties. As soon as you include treaties you bring them within the scope of the Federal Court and the courts of law. I would have thought that the States—anyhow, a good many of the States—would look with considerable misgiving at that result. Secondly, I suppose it would be true to say that most of these treaties deal with direct relations between the Crown and the Princes and have nothing whatever to do with the Federation at all. That being so, we have not included treaties ; not because we have the least intention of regarding them as less sacred than they have been in the past or requiring less protection than any of these other subjects that we have dealt with in No. 110. We feel, however, that the Princes have full justification for asking for some reference to the sanctity of their treaties but we feel that the place for such a reference would not be in the clauses of a Constitution Act but rather in a Proclamation by the Crown. I myself think that would be the best place to make such a declaration ; or in the preamble of an Act of Parliament. My own view is against the suggestion of a reference in the preamble of an Act of Parliament because inferentially that brings them within the Federal Constitution and also, as a result of past history. I am rather prejudiced against references in preambles to anything.

11,974. May I therefore bring out one inconsistency there would be ?—I accept the Secretary of State's reasons, but we have alluded to the Princes' privileges and the treaty rights amongst the Governor-General's responsibilities ; Section 52, for instance, provides that without the previous consent of the Governor-General no question will be allowed or no resolution passed in the Federal Chamber which would affect the rights and privileges of Indian States ?—Yes.

11,975. If such prohibition applies even to resolutions and questions in the Federal Chamber, is there no necessity for saving Bills affecting the States—legislation affecting the States ? It would be much more necessary ?—I still think that it is much safer from the point of view of the States not to bring it into one of the Clauses.

11,976. But look at Section 52—Everything in Section 52 is left at the Governor-General's discretion.

Sir Manubhai N. Mehta.] But here, no discretion is left even to the Governor-General. In Section 52 without the previous consent or sanction of the Governor-General no resolution could be passed or brought before the Federal Chamber which would affect the States. I said there is greater reason for prohibiting any Bill to be brought which would affect the States.

Sir Hari Singh Gour.] But I was drawing your attention to Section 52 (b), which prohibits the discussion of any matter.

Sir Manubhai N. Mehta.] I asked what is the objection, if resolutions are to be prohibited, to having such prohibition against Bills.

Sir Hari Singh Gour.] You are assuming that only resolutions and questions are prohibited. I go beyond it and say what is prohibited under Section 52 is the discussion of any matters.

Mr. M. R. Jayaker.

11,977. May I ask the Secretary of State one point which I want to clear up in this connection. If you will kindly turn to No. 18 of the Proposals, and sub-clause (f) : it is : "the protection of the rights of any Indian States". Am I right in thinking that this Clause includes treaty rights or that it only includes those rights which you specify with great elaboration in paragraph 28 of the Introduction ? I am inclined to think it does not include treaty rights but only those rights which are specified and instances of which are given in paragraph 28 of the Introduction. I should like to know whether my interpretation is right ?—I should like to look into this point of Mr. Jayaker's. I am rather inclined to agree with him, but it depends upon a rather careful investigation of No. 28.

*Sir Manubhai N. Mehta.*

11,978. If the object is to exclude treaty rights from the purview of Courts, would that not be seened by a mere reference to the sanctity of treaties in some kind of Preamble or in a Proclamation?—It would have the effect of keeping it outside the Constitution Act, and, if it once gets into the Constitution Act, then you will have Courts of law interpreting it. I would, therefore, say that it is much safer from the point of view of these treaties in the States to keep it out.

11,979. Would not that danger be the same in either case?—No; if it is not in the Act, it could not then come in as a question of the interpretation of the Act.

11,980. But it might come in as a question of the jurisdiction of the Courts?—I am speaking now not as a lawyer, in the presence of some very distinguished lawyers. I should have thought there would be much less risk if you do not put it into the Act.

*Mr. Zafrulla Khan.*

11,981. Secretary of State, may I draw your attention to paragraph 118, at page 69, which deals with the procedure whereby the validity of legislation may be challenged. It is divided into two parts; the first part where it is proposed that a time limit will be imposed within which the validity of legislation may be questioned on certain grounds?—Yes.

11,982. That is to say, if the ground of objection is that a certain piece of legislation has been passed by a Legislature which was not competent to pass it, but that it was some other legislature in India that had power to make legislation on the subject, then such a challenge must come within a specified period?—Yes.

11,983. I take it that if a piece of legislation is objected to on the ground that it is repugnant to the proposals contained in Section 110, the time limit would not apply?—No; it would not apply.

11,984. Then the subsequent part also relates to objections of this kind, that wherever an objection of this kind is raised, say, in a Trial Court, provision will be made that the Court should make

a reference on this question alone to the High Court of the Province or, in the case of a State, to the High Court of the State?—Yes.

11,985. The suggestion that I make is that these two proposals should be put into two separate paragraphs. The first may stand as it is, that a time limit should be imposed which should be operative only providing there was competence in some legislature in India to legislate, but the objection is that this particular legislature could not. Then with regard to the second part, my suggestion would be that whenever the validity of the Statute is challenged in a Court of Law there should be power (it does not matter what the ground of objection is) in that court to make a reference on that point to the High Court?—Off-hand those seem to me points that are well worthy of attention; I will certainly look into them.

11,986. That is my first suggestion, for this reason, that if this paragraph remains as it is then other kinds of challenge which bring into question the validity of Statutes would have to be adjudicated upon by the Trial Court itself, leaving the matter in the ordinary course to be dealt with by the High Court on appeal, and it is eminently desirable that this kind of procedure for that highest issue relating to the validity of a piece of legislation should at once be referred to the High Court in order to obtain its final opinion upon it, and then the rest of the matter should be adjudicated upon by the Trial Court, and it should apply to all kinds of challenge to the validity of legislation. I quite see that it is not advisable to apply the time limit to that, and therefore it would be better to split this matter up into two parts?—I will certainly look carefully into that question.

11,987. Then the next matter I wish to refer to is again with reference to the second point, and here provision is made that reference shall be made to the High Court; but I should think that even in the case of a reference to the High Court, as the matter will involve the interpretation of the Constitution, there would be an appeal provided from the opinion of the High Court to the Federal Court?—Yes; I think that again we must look into. It seems a very reasonable proposal.

11,988. And if that is so, I am almost certain that there would have to be an appeal to the Privy Council from the Federal Court's decision?—Yes.

11,989. In view of that, my suggestion is that, of course, a first reference of such a matter, whether arising before a State Court, Trial Court or a British Subordinate Court, should be to the Federal Court?—I feel some difficulty in saying yes or no to a very technical question of that kind.

11,990. I merely make the suggestion ; I merely want that view to be on the record and my reason for it, and my reason is this : If a reference is made to the Provincial High Court and the High Court gives a decision upon it, and the parties to that particular litigation were either content with that decision or unwilling to incur further expenditure on an appeal to the Federal Court, you may have the result that the validity of certain Statutes is upheld in some Provinces and is not upheld or is questioned in other Provinces, where the High Courts of the Provinces say "No, this is invalid," and you may have a conflict in this matter and the Federal Court will be the only Court whose decision will apply throughout India. In a matter of this kind again it is very, very desirable that the final pronouncement should be by the Federal Court, and it should not be left to private litigants to decide whether they shall or shall not take it to the Federal Court, and an arrangement be made that a reference only upon that point should go to the Federal Court. Then, whenever such a question is raised, the opinion of the Federal Court would be binding throughout India afterwards with regard to that piece of legislation?—I am much obliged to Mr. Zafrulla Khan for his suggestions. We will look into them.

Archbishop of Canterbury.

11,991. I presume, Secretary of State, these are very important points which would come before us for review when we come again to the question of the Courts, which is still, I understand, one of the subjects upon which you wish to speak?—Yes ; I think that is true.

Mr. Zafrulla Khan.

11,992. Now with regard to just one question—I scarcely can call it a ques-

tion—it is merely a suggestion—as to this matter of legislation slipping through, there is only one matter to which I wish to draw your attention when you are considering it further in preparing your Note. As I have said, there are two classes of legislation ; one may be legislation which is ultimately found to be *ultra vires* altogether. With regard to that, there cannot be much apprehension, because if it is altogether *ultra vires* it can always be challenged in a Court of Law, particularly if it is repugnant to matters specified in paragraph 110. There is no limit. It can always be challenged. With regard to questions of consent, looking at the question from the practical point of view, there will be many stages at which that question will be raised and considered ; the first will be in the Legislative Department of the Province or the Government of India, as the case may be. The next will be this : It may be that when previous consent is required and the matter has not been considered and subsequent consent is given, it will be cured. Surely when a piece of legislation is before the Legislature, Provincial or Central, and anybody raises the question that it requires previous consent either of the Governor or of the Governor-General, would it not be the duty of the President to go into the matter and, if he finds that previous assent is necessary, to stop the further progress of the measure on that ground there and then?—Yes ; I think it would be so.

11,993. That is one stage which in almost every case is bound to arise because, whoever is opposed to the measure, apart from the experts who have looked at it in the Legislative Department, is likely to pay attention to this, and if a question is raised the President cannot say, "We need not pay attention to that." If it secures the subsequent consent of the Governor or Governor-General it will be cured. If he finds the assent is not there, he must throw it out. I am merely suggesting that is one of the stages through which legislation of that kind has to pass and it is an additional scrutiny which has not been so far referred to. It is not a question and I do not expect

an answer to it?—I have taken note of what Mr. Mr. Zairulla Khan has said.

Sir *Abdur Rahim*.

11,991 Secretary of State, with reference to paragraph 119, I want to be clear with regard to the previous consent which is necessary for any legislation regarding coinage and currency, or in relation to the management of currency and exchange. The Governor General has a special responsibility regarding the financial stability and credit of India, but, supposing legislation is proposed regarding coinage and currency, fixing, for instance, the ratio, which is not calculated to affect the financial stability and credit of India, would the Government even in such a case have to obtain the consent of the Governor-General, and if so, why?—Yes, for the reason I have just stated, that the discussion of certain of these questions may lead to a considerable amount of harm.

11,993. But you know as regards that there is a great deal of opinion in India regarding the ratio, for instance. Surely you would not ban out all discussions? Supposing the Governor-General thought that the legislation that he proposed is not likely to affect the financial stability or credit of India in any way, why should not there be a discussion?—Supposing he thought there were no dangerous reactions, he would allow a discussion.

11,996. But I mean the Bill itself may be such that any such apprehension is precluded. Would you preclude discussion, apart from the question of financial stability and credit of India, of any legislation regarding coinage and currency? We have always felt that it was necessary to be somewhat precise in a matter of this kind. It has such very dangerous reactions. On that account, every time we have discussed these difficult financial questions, we have always said that this was one of the financial safeguards that we did regard as essential. That opinion was held not only by the Members of the Government and by the British Representatives in these various discussions, but it was held by a good many Indian representative public men as well. It is definitely one of the financial safeguards that we do regard as essential.

11,997. But is not the special responsibility wide enough?—No; we came to the conclusion that it was not. After all, in these questions of high finance, we have to be very cautious, and it was the considered view of not only the politicians but of business men as well that a safeguard of this kind was very essential.

11,998. We are not dealing with paragraphs 125 or 126 now. I understand?—No; I think we were going to keep them for later.

*Mr. M. R. Jaffer*.

11,999. On paragraph 120, I have one difficulty which I should like the Secretary of State to clear up: "The consent of the Governor-General given in his discretion will be required to the introduction in a Provincial Legislature of legislation on such of the matters enumerated in the preceding paragraph as are within the competence of a Provincial Legislature, other than legislation which regards"—then it is mentioned. Now, what are these matters which are within the competence of the Provincial Legislature other than Governor's Acts, etc., which are mentioned in paragraph 119. I should have thought none of the matters mentioned in paragraph 119, excepting the Governor-General's Ordinance, or a religious Bill, are within the competence of the Provincial Legislature?—It might be Acts of Parliament. That is one case that occurs to me. It might also be questions connected with criminal cases against Europeans.

12,000. They will be all Federal subjects under the list which you have given. They will be all Central. I want to know exactly what is intended?—It might also be cases falling in the concurrent field; but I will gladly make my answer rather more concrete in the Note I will circulate.

12,001. I wanted that to be investigated because there is a little doubt about it. Then, going back to paragraph 119, the words "religious usage" I am following upon the argument that his Grace, the Archbishop of Canterbury, took. You know that dealing with two ancient religions like Hinduism and Muhammadanism, a number of usages which look like religious

usages have come from the past which, judged by modern standards of public decency, public morality and public law, are undesirable?—Yes.

12,002. If you put the words “religious usages” it would be difficult to get them defined, and I will give you an illustration of what I mean. Take, for instance, the Hindu usage of dedicating young girls to temples. It is in many parts of the country regarded as a religious usage. Modern sentiment regards it as an immoral usage. Do not you think some saving ought to be made in favour of usages which, although religious to certain people, offend against modern opinions of decency or morality, or public policy, or any of those considerations?—We have found some difficulty in being more precise, and what we have done is to continue the existing words. I will look into the question again and consult with Mr. Jayaker over it, if I may, to see whether we could be more precise. We have found a difficulty in being more precise.

12,003. The fear which I have, and which many others share with me is this, (if you will kindly turn to paragraph 18 which speaks of the special responsibilities of the Governor-General) that one of the Governor-General’s special responsibilities is the prevention of any grave menace to the peace and tranquillity of India?—Yes.

12,004. Supposing a Bill was before the Legislature requiring the consent of the Governor-General under paragraph 119, and that Bill related to a religious usage of the nature I have just mentioned to you, and supposing strong commotion went up in an orthodox province against a Bill which was regarded as relating to religious usage, and the result of that grave agitation was that the Governor-General thought there would be grave menace to the peace and tranquillity of India, he may be inclined to exercise his power under paragraph 18 and prevent that Bill. In other words, it would mean this, that the stronger the agitation tending to create the appearance of a menace to peace and tranquillity, the greater the chance of success of the orthodox community succeeding, under paragraph 18, in inducing the Governor-General to

put a stoppage to the introduction of that Bill?—It is that kind of risk that has made us come down on the side of a rather general term like this, a term which Mr. Jayaker will remember has been in existence for a great many years, and a term whose application is fairly well understood as a result of this history. The Governor-General will have his discretion as to whether to act or not to act in such a case as Mr. Jayaker has put. If he satisfied himself that the agitation was a fictitious agitation, and that it was got up for the express purpose of intimidating the Government against some measure of social reform, I imagine that the Governor-General would exercise his discretion in allowing the proposals to go forward.

12,005. I have no doubt that is so. I was only suggesting whether you would not reconsider the expression “religious usage”?—Yes.

12,006. That is only a suggestion I am making?—I will certainly consider it again, and, if Mr. Jayaker would send us any suggestions, we should be glad. I have put to him our difficulties, and I have given him our reasons why we have used it.

*Marquess of Reading.*

12,007. Is it not in the Royal Proclamations that have been issued in the past? I have a recollection that it is in one. I only ask you to bear it in mind?—Yes, it is a phrase that has been in existence for more than 50 years.

12,008. I have seen it at various times?—I do not know what Lord Reading would say, but there is a good deal to be said for continuing a phrase that has been in existence for a considerable time, and which people generally understand.

*Marquess of Reading.*] If I may express an opinion I would agree with that.

*Archbishop of Canterbury.*

12,009. On the other hand, we have had a great deal of evidence that it was the use of these large terms which, in point of fact, has given great hesitation to Governments under the present regime from facing the necessity of some of these reforms?—Yes; we must



take all those issues into account. As I say, we have not ignored them. We have thought on the whole it was better to use this phrase, but, obviously, it is a matter for discussion.

Sir *Abdur Rahim*.

12,010. May I make one suggestion ?—Yes, please.

Sir *Abdur Rahim*.] I suggest "having the force of law"; suppose you substitute that, and narrow it ?

Sir *Hari Singh Gour*.] I am afraid it will not help us at all, because under Hindu law all usages embodied in the *Shashtra* have the force of law.

Sir *Abdur Rahim*.] The dedication of girls to the Temple is not recognised by law ?

Sir *Hari Singh Gour*.] According to Hindu law custom is the transcendent law.

Marquess of Reading.

12,011. It shows at once the difficulty you get into by the discussion between these two gentlemen ?—We will take it into account, Sir *Abdur*.

Mr. M. R. *Jayaker*.] The possible solution lies in appending words like "contrary to public morality or public decency," or some such expression. That is a suggestion which occurs to me.

Mr. *Zafrulla Khan*.] I am afraid expressions like "contrary to public decency and public morality" are as difficult of interpretation. They are bound to cause trouble because they have got to be interpreted.

Mr. M. R. *Jayaker*.

12,012. With regard to the other point, namely, the consent of the Governor-General with regard to coinage and currency, you are aware, Sir *Samuel Hoare*, that at the first Round Table Conference Indian opinion was contrary to the reservation of this right to the Governor-General. May I read in that connection a short statement in the Report of the Round Table Conference, page 14 of the copies supplied to us, where it was stated (I am speaking of the very first opportunity we had of expressing an opinion): "Upon the question of finance, Indian opinion was

that even the safeguards set out in the Report went too far, especially those giving special powers to the Governor-General." You are aware of that, that Indian sentiment as it has expressed itself there is strongly against the retention of this power in the hands of the Governor-General by way of giving prior sanction to the Bill ?—I would certainly agree that there is a strong body of opinion in India against this safeguard. We took it very carefully into account in our subsequent discussions, but we did definitely come to the conclusion that in the very difficult financial conditions that have arisen since the first discussion and with which it looks as if we shall be faced for some years to come, it was an essential condition.

12,013. Then do you think there is any necessity for giving this power to the Governor-General, namely, sanction to any legislation relating to coinage and currency even after the Reserve Bank is established, having regard to the fact that you are making the Reserve Bank free from political influence, and, having further regard to the fact that legislation dealing with the Reserve Bank would require the Governor-General's previous sanction ? I should have thought you would have made the Reserve Bank strongly entrenched from discussion and alteration by the public. Do you think there is any necessity for continuing this power in the hands of the Governor-General after the establishment and working of such a bank ?—Yes : we feel that it is really essential, and a complementary safeguard. You might have the operations of the Reserve Bank gravely compromised by discussions of this kind. Take, for instance, the case that is in everyone's mind, the case of the rupee ratio. You might very well have the foundations of the Reserve Bank being shaken by political agitation on the subject, and, particularly in the difficult early years when it was gradually getting itself started.

12,014. There is no time limit to the powers given in paragraph 119 ?—There is no time limit, nor, indeed, I think can there be a time limit given, but no doubt if things work well, and there is no need for the Governor-General to exercise a veto of this kind, discussions in course of time will take place.

12,015. The reason why I am pressing this point, Mr. Secretary of State, is this, that there is a strong feeling in India that there is an intimate connection between the development of industries and agriculture, and the regulation of the currency, and, as you have transferred to the popular Minister's hands the Department of industry and agriculture, those two Departments are so inseparably interconnected that no Minister can make much progress in industry and agriculture unless he has the power of regulating the currency of the country, and, as you have transferred one, it would not be wrong to transfer the other. That is the only reason I am driving the point?—I do not object to Mr. Jayaker pressing the point. It is a very important point, and this has not gone by default. Although we realise that the points he has just made are very strong you have to consider the whole position. You have to consider the whole future of Indian credit. You have to consider (and this is an integral part of the encouragement of industry to which he has just alluded) a problem which is very urgent for India, namely, the problem of getting new capital. It has always appeared to me, the more closely I have considered financial questions in India, that the great need of India in the future is capital, and it looks to me as if for many years to come the chief source of capital will continue to be London. I hope very much that the Indian capital will continue to be forthcoming, but, I believe, that for these great sums in the future it will be to the London market that future Governments of India will look, and, taking those very important considerations into account, we have felt that it was quite essential to put the credit of India above any kind of suspicion, and, in order to achieve that object, we did feel that these safeguards were necessary.

12,016. But you will have a double protection, if you will allow me to pursue the point, by one more question, you have made the financial stability and credit of India a special responsibility of the Governor-General. You have now brought the proposal of a Reserve Bank which is free from political influence.

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No alteration can be made by the Legislature in the Reserve Bank which administers currency and coinage. I should have thought these two would have been enough protection for any person who wants to send capital out to India?—The trouble is (I have said this before) that financial people are very conservative, and it was made very clear to me that this was a safeguard to which they do attach a very great importance, quite apart from politics, and, on that account, I feel that, chiefly in the interests of India, it is necessary to maintain it.

Sir *Abdur Rahim*.

12,017. May I just intervene? There are other countries which are not linked to Sterling which do resort to London very largely for credit?—That is so, certainly, but these things have grown up, Sir *Abdur Rahim*, as a result of experience over a great many years, and, believe me, the money market of the world, and the money market of London, as the greatest money market in the world, is a very conservative institution, and it is much wiser at the outset to take these safeguards, and to ensure by that means, as I believe we shall ensure it, the future credit and stability of the country.

Lord *Eustace Percy*.

12,018. Surely this particular safeguard which we are discussing now is in practice only a safeguard preventing the introduction of private Bills or private members resolutions?—Exactly.

12,019. And Mr. Jayaker would agree that no good purpose is likely to be served by the introduction of private Bills or Private Members Resolutions.

*Marquess of Reading*.] Why does it apply only to private Bills and Private Members resolutions? A Government Bill would require the Governor General's previous sanction.

Mr. *M. R. Jayaker*.

12,020. I do not know whether the Secretary of State admits the interpretation of Lord *Eustace Percy* that paragraph 119 relates only to Private Bills?—I think it covers all Bills, but in actual practice, I suppose, it would be applied to Private Bills in this financial regard.

for this reason, that if the Government wished to introduce a Bill of this kind it would either be with the Governor-General's approval, or it would not. If it was with the Governor-General's approval obviously no such controversy as he suggests arises. If it was not with the Governor-General's approval, he could intervene in the interests of the credit and stability of India.

12,021. That would not entitle him to prevent the Bill from being considered, because he could then only act under Section 18, under his special responsibilities?—Yes, but he could so act. There he could overrule his Ministers as a part of his special responsibilities.

Sir *Abdur Rahim*.] It is a treble safeguard.

*Archbishop of Canterbury*.

12,022. Is it pertinent to point out, Mr. Secretary of State, that while what you say would effect legislation under paragraph 119 there is nothing there to prevent discussion by way of resolution, so that the ventilation of public opinion on any of these matters, even the question of currency, would be secured?—Yes, but, your Grace, under paragraph 52 he has general powers.

12,023. Yes, but apart from paragraph 52, paragraph 119 deals exclusively not with discussion but with legislation. May I be sure about that. That is so, is it not, apart from these special powers the Governor has there is nothing there to prevent anyone bringing forward any resolution on these matters, and having them discussed?—Yes, that is so. There is a considerable difference, your Grace will see, between a resolution and a comparatively academic discussion, and the actual introduction of a Bill in matters of this kind.

12,024. Yes; still resolutions and discussions may affect legislation indirectly?—They may. Judging from the House of Commons they often do not.

*Archbishop of Canterbury*.] I hope that will not be so in the present case.

*Dr. B. R. Ambedkar*.

12,025. I want to ask one question, Sir Samuel, on these provisions in general. The ultimate purpose of these previous sanction rules would also of course be

achieved by the power of veto—the subsequent power of veto which the Viceroy and the Governors have got; so, from that point of view, there is really not much to be gained by these provisions. I mean although the Viceroy may give his previous sanction he is not thereby bound to adopt the Bill when it is finally passed; he has the power of veto. So, from that point of view, there is not much to be gained by the rules of previous sanction, which could not ultimately be gained by the power of veto?—I am not sure that I should agree with Dr. Ambedkar. The veto is a sanction of a somewhat different kind. It seems to me it is a bigger and more serious sanction. It comes after the Legislature has formally pledged itself to certain proposals; I think therefore it is a more serious sanction.

12,026. Apart from all that, so far as the main object is to prevent anything affecting adversely the special responsibilities of the Viceroy, the veto is an effective measure?—I was just coming to that second consideration. The veto has a long history behind it, and judged by British experience generally, the veto becomes more and more in course of time something in the nature of a Constitutional formality.

12,027. But what I wanted to say was this. So far as I am able to judge the only distinction that one could draw between the effect of a previous sanction rule and ultimate veto is that the one, namely, the previous sanction, prevents discussion, while the veto does not. Is that not so?—It is a difference.

12,028. That is a difference. Now, what I want to point out to you, Sir Samuel Hoare, is this: Surely if discussion is to be prevented because it is going to attack the special responsibility of the Viceroy, you will bear in mind that this previous sanction rule certainly cannot operate to prevent discussion, either in the Press or on the public platform outside the legislature, and cannot even prevent a public demonstration on an issue that would legitimately be brought under a previous sanction rule, so the only thing really that would happen under this is that while the public and the Press may be free to agitate and to demonstrate on a matter covered by the previous sanction rule,

the only body that would be muzzled would be the Legislature?—That is one way of putting it; it is Dr. Ambedkar's way of putting it.

12,029. Is it not a fair way of putting it? Surely the Viceroy's previous sanction powers are not going to be so widely extended in their operation as to cover the prevention of any discussion of a matter subject to previous sanction, either in the Press or in public meetings, or anywhere else?—I think there certainly will be discussion of that kind. None the less, I do think there is a difference between discussion in the Legislature and the comparatively irresponsible discussion outside. Secondly, this Sanction of the previous consent has been in operation for some time and it was accepted generally as a Part of the New Constitution at each of the Round Table Conferences? Thirdly, if Dr. Ambedkar will look at the categories set out in paragraph 119 he will see that for each of them there is a considerable demand for some kind of special precautions. For instance, if he will take the question of religious rights and usages: There he must have noticed the very strong feeling that certain sections of the orthodox Hindus have upon the subject. He does not agree with them; he thinks they are all wrong. At the same time, they do hold these views very strongly, and they would like questions of that kind excluded from the Indian Legislature altogether. Now, we have attempted to adopt a midway attitude between the two points of view and so on. With each of those categories I could make a similar defence, that there is a considerable body of opinion asking for some special precautions in these directions.

12,030. What I was trying to drive at was this, that while a number of the Legislative Council and a number of the Legislative Assembly may be free to discuss these matters outside in public, they will not be free to discuss them when they come inside the Legislative House. That is the only difference you are making by this previous sanction rule?—They can have resolutions, but that is substantially the case.

12,031. Now I just want to make one suggestion with regard to the point raised by Mr. Jayaker regarding the use of the expression "religion and re-

ligious usages", because that is a thing in which I am so vitally concerned. I am just making the suggestion whether it would not be sufficient to use the expression "articles of faith" rather than the phrase "religion and religious usages"?—I would have thought that articles of faith would have occasioned almost the same kind of controversy.

*Sir Hari Singh Gour.*

12,032. More so?—And the trouble of a new phrase of that sort I would have thought would have concentrated upon it more varieties of interpretation even than the old phrase.

*Dr. B. R. Ambedkar.*

12,033. I suggest that as far as possible the word "usage" ought to be avoided?—I will take note of what Dr. Ambedkar has said.

*Sir Phiroze Sethna.*

12,034. May I be allowed to put just one question to the Secretary of State? Are we to conclude, Secretary of State, from your replies to Mr. Jayaker that the London market has the last say in the matter of ratio?—No, certainly not.

12,035. I may remind you that in the course of the discussions on the Reserve Bank, India was in favour of a fresh inquiry, if not immediately, within a reasonable time?—Yes.

12,036. May we know if such an inquiry will be made?—I could not possibly in the middle of a discussion about the relations between certain subjects and the Legislature, embark upon a discussion about the Reserve Bank, and one of the proposals that emerged from a very expert inquiry that took place in the summer.

12,037. I put the question because I understood you to say that the views of the City here had to be considered because otherwise capital would not be sent out to India, and India needs more capital?—What I did say was that India needed more capital, and it would be a great mistake to disturb the views of the place from which I hope they will receive large sums of capital in the future: but I have never suggested for a moment that the City or any body of financiers have any

kind of veto upon the Government proposals. These proposals are made upon their merits, political and financial.

*Sir Hubert Carr.*

12,038. There is only one question I wish to ask. You have explained, Sir Samuel Hoare, the difficulty of being precise with regard to the field in which the Governor-General's previous sanction will be required, but will paragraphs 119 and 120 be wide enough to prevent any Bills being introduced regarding amending the Indian Police Act of 1861 or the Local Police Acts, without the prior sanction of the Governor and Governor-General?—It is not one of the categories here specifically excluded under paragraph 119.

12,039. I did realise that, but I was wishing to put the view that perhaps if it were excluded it would give greater confidence to the police and their personnel if they knew that no Bills could be introduced affecting the present position of the police without the prior sanction of the Governor-General or the Governors?—Yes. At present it is not included.

*Marquess of Salisbury.*

12,040. The Secretary of State will remember that one of the matters which was urged upon us, I think, by the police witnesses, was that the Act of 1861 should be sacrosanct from being upset except by the Imperial Parliament?—Yes. One of the difficulties that I think Lord Salisbury will realise when he looks at the Act of 1861 is that it does not appear to me it would provide the kind of protection for which they were asking. I have not got the Act here, but so far as I remember it is a very short Act merely saying that certain administration should have certain responsibilities.

12,041. The Secretary of State is quite right. What is important under the Act is the regulations which are made under it?—Yes. Then if you come to regulations, as I think I said earlier in our discussions, the regulations amount to volumes and volumes of detail, some of it of great importance, some of it no doubt of administrative importance, but not of the kind of importance that the Committee I think have in mind when they are now asking me this question.

*Sir Hubert Carr.*

12,042. There is only one other field which has been brought up as requiring prior assent, and that was brought up by the Associated Chambers of Commerce of India in connection with certain legislation, and I see that also comes up this afternoon, so I will not press the matter here, but I would like to be sure that paragraphs 119 and 120 are not exhaustive of the subjects which will require prior assent?—They are exhaustive as the proposals stand now.

12,043. Then it will be up to the witnesses and others to try and make their point before the Committee as to the necessity for enlarging that field. Is that so?—Certainly. None of these proposals is final until the Joint Select Committee has made its report and Parliament has legislated; and no doubt there will be people who will ask for additions to this list; there will be people who will ask for subtractions from it. Nothing is final until the Act of Parliament is operating.

*Sir Austen Chamberlain.*

12,044. Secretary of State, I want to ask if you can supply us with some information, but I am not sure whether my request is a practicable one. Under the present Government of India Act a law made by any authority in British India or any provision which is repugnant to an Act of Parliament is invalid?—Yes.

12,045. Under the White Paper proposals, provided that the assent of the Viceroy has been properly obtained, such a law would not be invalid unless it came under the express prohibitions in No. 110?—That is so.

12,046. Would it be possible for you to give us in any form some idea of the scope of the legislation which, under the existing Government of India Act, is outside the purview of the Legislature, and which will be placed within its purview subject to the assent of the Governor-General by the new proposals?—Yes, I think I could certainly do so.

12,047. I should be much obliged if you could, because unless one knows how far the present Indian law is dependent upon British Acts of Parliament, one does not know what is transferred?—Yes.

I did propose in this note to which I alluded earlier in the morning that I would include at any rate an illustrative list even though it may not be complete.

Lord Rankeillour.

12,048. Is it not proposed to put anything into the Constitution Act with regard to the Federal Reserve Bank? Is it proposed to legislate separately for that?—What is happening with the Reserve Bank is this. There was this very comprehensive and expert inquiry into the question in the summer. Previous legislation of the kind has taken place in the Indian Assembly, and the arrangement has been that a Bill would in due course be introduced in the Indian Assembly and that Bill would pass through the Indian Assembly if the Indian Assembly is ready to pass it. Some reference will certainly be needed to the Bill in this Constitution Act.

12,049. That may bring it under 110?—Let me just be clear about that. No, it will not bring it under 110; it will bring it under 119; but except as otherwise Parliament may determine, only the Imperial Parliament would be able to alter the proposals.

12,050. If the reference in the Constitution Act confirms the provisions of the existing Government of India Act, that would make it part of the constitution, would it not?—It would become a part of the constitution—to this extent, that a reference of some kind would be made to it in the constitution that would ensure the proposals of the Indian Reserve Bank Act only being alterable with the approval of the Imperial Parliament.

12,051. Then for our purposes it would bring it under 110?—I think it would, but I would like to look a little further into it.

12,052. It reads here as if it were not in the constitution. So do one or two other things for that matter?—I should like just to consider the matter. It is rather a peculiar position.

Earl of Lytton.

12,053. One final question of the Secretary of State. Sir Hubert Carr has mentioned a number of matters not at present covered by these clauses but which in evidence it has been suggested

should be brought within their scope. May I remind the Secretary of State of one other class which was referred to in evidence before us and it has not been mentioned to-day, namely, the rights and positions of certain classes of land owners. The Secretary of State will remember that there are classes of land owners in India having special rights, such as the Talukdars of Oudh and Inamdars of Bombay, who have definite rights and established positions. In addition, there are people in the province with which I was connected in Bengal who claim, not indeed a right, but something which is akin to a right under the permanent settlement in that province. I am not, of course, suggesting that the Legislature should be debarred from legislating on these subjects, but I will ask the Secretary of State to consider whether it may not be desirable to include among the subjects requiring special sanction before legislation is introduced, the position of these land owners to which I have referred and which was brought before us in the evidence of one of our sub-committees, I think?—Lord Lytton has raised a question that has been in my own mind for some time and particularly after the evidence that was given to the Committee in the summer. It seems to me that there is a strong case to be made for some kind of precaution in the type of case that he has just mentioned. What impressed itself upon my mind was this: that many of the cases that were brought to our attention were definite obligations undertaken by the Government of the day; sometimes as rewards for public services; in other cases as a continuation of religious grants that had been in existence under Governments before the time of the British Government. In cases of that kind I should have thought that there would be a considerable measure of support, both in India and in this country, for some such special precaution being applicable, such as the precaution of the prior sanction mentioned in paragraph 119. A more difficult question arises when you come to a big and comprehensive settlement like the permanent settlement, touching, as Lord Lytton knows better than anyone else, almost every corner of the life of

a province. Now there again there is no doubt I suppose in anybody's mind that it came about as the result of a bargain between the Indians and ourselves, and there again some kind of precaution might be justifiable. Upon both those questions I would very much like the advice of the Committee. I own myself I am impressed by the case that was made in the summer and by the need for some such precaution as that proposed in paragraph 119.

Earl of Lytton.] I am very much obliged to the Secretary of State. Of course, it will be a matter for discussion later on. I thought it well to mention it as one of the subjects about which discussion might be brought up.

Sir Hari Singh Gour.

12/05/33. There is just one question I wanted to ask the Secretary of State. Did I understand the Secretary of State to imply in answer to a question by

*(The Witnesses are directed to withdraw.)*

*(After a short adjournment.)*

Mr. Morgan Jones.] My Lord Chairman, before you call the witnesses, I would like to raise one point. Before the adjournment to-day a question was addressed by Lord Lytton to the Secretary of State for India to which he gave a long reply. I had intended raising a

Lord Rankeillour that after the Reserve Bank Bill is passed by the Indian Legislature, any amendment of that Bill would be with the concurrence of the Imperial Parliament or that no amendment could be made by the Indian Legislature except with the consent of Parliament?—The position is rather a complicated one. It is this, in a sentence or two: Here we are asking the Indian Legislature by its own legislation to carry out arrangements that we say are essential for bringing the constitution into being. Obviously if that arrangement is to take effect, it cannot be possible for the Indian Legislature at some future time to alter the conditions without which the constitution would not have come into operation without the previous assent.

Chairman.] I propose to adjourn now to half-past two o'clock, at which time we take the representatives of the Association of British Chambers of Commerce—Memorandum No. 74.

point of order arising from those two questions, but I see the Secretary of State is not present, and I therefore give notice that I will raise it when the Secretary of State returns.

Chairman.] That is quite understood.

10th October 1933.

Present :

Lord Archbishop of Canterbury.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Middleton.  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutcheson of Montrose.

Mr. Butler. -  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

# INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

# BRITISH INDIAN REPRESENTATIVES.

His Highness the Aga Khan.  
Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Lieut.-Col. Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.

Mr. N. M. Joshi.  
Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Sardar Buta Singh.  
Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

Mr. *Morgan Jones*.] My Lord Chairman, last Thursday, you will remember, I notified you that I intended to raise a point of order on the return of the Secretary of State to the witness chair. I am obliged to you, my Lord Chairman, for having allowed me to postpone the question, but I think I ought to apologise to the Secretary of State for not having raised it the very moment that he gave his answer to which I referred, but I quite honestly believed that he was coming back in the afternoon and I should be able to raise it then. The question which I wish to raise is on the answer to question 12,053. The Committee will remember that Lord Lytton, right at the end of the morning session, addressed a question to the Secretary of State in regard to certain classes of land owners and the purport of his question was that he hoped that the Secretary of State would consider whether he might not reserve those classes of land owners as being a fit subject for precaution under paragraph 119. My Lord Chairman, if you will allow me, I would like to say one word as to why I attach importance to this point before I put it formally to you. I can quite understand (even though I, my Lord, may not agree) the Secretary of State being invited to consider necessary precautions with regard to Police and so on, where British interests and British interests alone are concerned, but, on this occasion, Lord Lytton invited the Secretary of State to

consider whether a precaution could not be exercised in respect of definitely Indian interests. I ought, in fairness to Lord Lytton, to say, my Lord Chairman, that he said of course that he did not suggest that the Legislature should be debarred from legislating on these subjects, but I do not think I am doing an injustice to the question of Lord Lytton when I suggest that he did indicate that he himself as a Member of the Committee had arrived at a conclusion upon this matter and was expressing his conclusion through the medium of the question which he was addressing to the Secretary of State. Not only that, my Lord Chairman, but the Secretary of State himself, whose position, I am quite sure, is clear to everybody, is a very difficult one, being a witness and a Member of the Committee, and I readily sympathise with him in that matter—the Secretary of State himself in his reply also indicated, not in set terms but by implication, that he too had arrived at a final conclusion on the matter. May I quote the sentences that are relevant from Lord Lytton's question : "I am not, of course, suggesting that the Legislature should be debarred from legislating on these subjects, but I will ask the Secretary of State to consider whether it may not be desirable to include among the subjects requiring special sanction before legislation is introduced, the position of the land owners to which I have referred



and which were brought before us in the evidence of one of our Sub-Committees, I think." Now, the answer of the Secretary of State is—I will not quote the whole of it but the part that is relevant : "It seems to me that there is a strong case to be made for some kind of precaution in the type of case that he has just mentioned." Then, he later on said this : "A more difficult question arises when you come to a big and comprehensive settlement like the permanent settlement, touching, as Lord Lytton knows better than anyone else, almost every corner of the life of a Province. Now, there again there is no doubt, I suppose, in anybody's mind that it came about as the result of a bargain between the Indians and ourselves, and there again some kind of precaution might be justifiable." Now it is quite true that both gentlemen clearly admitted that the Committee would have to consider this later, but my submission to you, my Lord Chairman, is that it is a little desirable, seeing that all of us have been specially enjoined not to discuss the merits of these questions outside these doors, that judgment should not be given at this early stage upon an important body of evidence like that which was given on behalf of landowners some time ago. If some Members of the Committee are to be free to express opinions from one body of evidence, then I submit they are all equally free, and it is an important point for this reason : That no one will deny, I think, that the question of permanent settlement is a most important question in the future decision as regards Provincial self-government in many parts of India. I merely ask, my Lord Chairman, that you from the Chair will make it quite clear that this question is not yet finally settled or decided upon by this Committee, and that not one of us is entitled to judge the issue at this early stage. I hope both gentlemen will forgive me for raising the point. I think it is a matter of importance.

*Chairman.*] I am much obliged to the Honourable Member for having given me private notice of his intention to raise this point. The matter of a breach of rule or of Parliamentary usage does not appear to me to arise. The Right Honourable Gentleman in the witness chair, in his capacity as Secretary of

State for India tells us that he has taken cognizance of certain published proceedings of this Committee in their bearing upon a particular issue, and has made plain to us that as the Minister responsible he has been impressed by the arguments adduced. Like my Honourable Friend I should deplore any suggestion that the opinions of the Joint Select Committee upon matters within our remit have been prematurely formed, but I find no word of that kind in Sir Samuel Hoare's answer to Lord Lytton. Indeed, he indicates that upon both points at issue he is prepared to await the advice of the Committee. With regard to the raising of this question by Lord Lytton, if I understand Mr. Morgan Jones aright, his view is that Lord Lytton would have been better advised not to have asked the Secretary of State whether evidence adduced before a Sub-Committee had been considered by him and whether he had been impressed by that evidence. Is that not Mr. Morgan Jones' point?

*Mr. Morgan Jones.*] My simple objection is to the implied decision which Lord Lytton raised and to which he gave expression.

*Chairman.*] Mr. Morgan Jones, of course, will realise that Lord Lytton as a Member of this Committee was drawing the attention of the Secretary of State in the witness chair to this matter, and was doing no more than any Member of the Committee does when he draws the attention of a witness before the Committee to the evidence given by a witness who has already appeared. I therefore, decide that no breach of rule and no question of any breach of Parliamentary usage arise.

*Witness (Sir Samuel Hoare).*] My Lord Chairman, may I add one observation to the ruling that you have just given? I would rather, if I may, not leave it simply upon the basis of the ruling of the Chairman upon a question of rules, though there, of course, we accept your ruling, I am sure, unreservedly; but, I would assure Mr. Morgan Jones, as one Member of the Committee to another Member of the Committee, that the last thing in the world that I wished to do was to imply that my mind had been irrevocably made up upon any of these great issues. Indeed, he will see in the

actual answer that I gave him, I say specifically that upon both these questions I would very much like the views of the Committee. I think he will also find that I dealt with this question just as I have dealt with a number of other questions. Indeed, earlier in the week, I was asked by one of the Indian delegates whether I was dealing only with the proposals in the White Paper or whether I was also taking into account the evidence that had been given. I gave him the obvious answer that I was dealing with both. The answer I gave to Mr. Morgan Jones was in exactly the same category. I can assure him that there was no intention either on my own part or with a view to influencing the Committee to imply that a decision had been taken.

Earl of Lytton.] May I add a word, my Lord Chairman?

Chairman.] If you please.

Earl of Lytton.] If I understand Mr. Morgan Jones aright, his complaint is that there was implicit in my question to the Secretary of State an opinion of my own on the subject of whether certain rights and privileges of Indian landlords should be included among the subjects that required the previous sanction of the Governor-General to legislation. I am not sure that even if I had an opinion on the subject I was to blame for having revealed that fact, but I would like to assure Mr. Morgan Jones that there was no opinion of my own involved in the question at all. May I remind the Committee of what we were doing on that occasion? We were discussing subjects which in the White Paper were stated to require the previous sanction of the Viceroy before they were made the subject of legislation in the Indian Legislature. It is not quite the case as Mr. Morgan Jones suggests that those are only subjects in which British interests are involved. We were discussing matters of religion and matters of communal interests which are purely as between one set of Indians and another, but they are essentially questions which raise very acute controversy and feeling. For that reason it was considered in the White Paper to be desirable that the previous sanction of the Viceroy should be required. Then Sir

Hubert Carr brought to our notice a number of other questions which he considered might be included. It was in that connection that I recalled to the Secretary of State's attention the fact that there were so many questions dealing with land owners' interests which also raised acute controversy in India, and, without expressing any opinion as to whether they should be made the subject of previous sanction or not, I mentioned to the Secretary of State a category of questions which I thought might also be considered, but I specifically stated that all this would be the subject of discussion later on. I only raised it at this point so as to justify a discussion which might follow when we reach that stage.

Mr. Morgan Jones.] May I say, my Lord Chairman, that I am very much obliged to both the Honourable Gentlemen for their kindness in replying to me so generously. I hope it may be taken that I raised the point in quite good faith and I am quite prepared to accept your ruling.

Sir Austen Chamberlain.] I am quite sure that all the Committee will recognise that Mr. Morgan Jones acted in perfectly good faith, but I am very anxious that nothing that has passed this morning shall preclude the Secretary of State from continuing to treat the Members of the Committee and Delegates with the confidence and frankness which he has done hitherto and that he shall not draw the inference, and certainly a wrong inference, from anything you yourself, my Lord Chairman, have said, and I am sure an inference which would be distasteful to both of us, if not to all of us, that we desire to limit him when he is before us and puts in an expression of opinion. No doubt, he must have further opinions. We are entitled to know what his opinions are, but he will, no doubt, where necessity arises, reconsider his opinions in the light of the views expressed by the Committee or by Delegates. May I just add this, and I think Mr. Morgan Jones will agree with me, that if I may trust my memory there is no Member of the Committee beginning with myself, if I may on this occasion, and no Delegate who has not put tendentious questions indicating the

line on which his own mind was moving. It would therefore be doubly unfortunate if the only person whose mind we might not know was the Secretary of State.

*Mr. Morgan Jones.*] May I, as regards that, say this, my Lord: I think that Sir Austen Chamberlain will agree with me that if he got the whole of my questions all he can say is that he guesses that my mind moves in certain directions.

*Sir Austen Chamberlain.*] I think it is a very shrewd guess.

*Mr. Cocks.*] My Lord, before we pass from this, would it be possible for the Committee to be supplied with an impartial Memorandum on the Permanent Settlement, stating, first historically, just how it was brought about, and so on.

*Chairman.*] I do not know whether a Memorandum of that kind would be well received by the Committee at this stage. I might look into the matter and see whether something could be done. If he puts that question to me perhaps, the Right Honourable Gentleman in the witness chair would express a view as to the expediency of the course he suggests being pursued.

*Witness.*] I will look into it and see whether anything could usefully be circulated.

*Earl Peel.*

12,721. Might I suggest the Cambridge History of India which I reviewed the other day for the "Times"? I think he will find a great deal of information in that and it is close reading?—I think probably that is a very good answer.

*Chairman.*

12,722. We are dealing first of all this morning with paragraphs 125 to 129, "Administrative Relations between the Federal Government and the Units." I understand that the Secretary of State desires to make a statement preliminary to his examination?—My Lord Chairman, I want to say a word or two of introduction to the discussion of Clauses 125 and 126 for this reason: They are drafted in a very abbreviated form, and it may be that their drafting will seem obscure to certain Members of the Committee; it might, therefore, help our

discussions this morning if I made as a short introduction the following comments upon them. Section 45 of the existing Government of India Act declares that all Provincial Governments are under the direction and control of the Government of India and requires them to obey the orders of that Government. A provision of this character would be obviously incompatible with the conception of Provincial Autonomy. At the same time, it has to be remembered that while in certain spheres of work such as the commercial departments: railways, posts and telegraphs and in regard to such matters as customs and income tax the Federal Government will have its own agency, yet, even in these matters, it will depend upon the collaboration and in respect of a large part of its other activities, upon the assistance of Provincial administrative officers. Thus, the actual execution of orders in relation to such matters as immigration into India, extradition, control of arms traffic, all of them Federal subjects, will rest in the hands of Provincial officers, that is to say, the District Officers of various kinds. All that the first part of paragraph 125 does, therefore, is to emphasise the obligation of Provincial Ministries to see that such assistance is forthcoming as an essential condition of the successful working of Federation, and thereby to adapt Section 45 of the existing Government of India Act with the necessary restrictions to the new conditions. The rest of the first sub-paragraph states the extent of the Federal Government's right to see that these obligations are really fulfilled, but I should explain that whereas the words "every Act of the Federal Legislature" correctly express this Provincial obligation as applying to all Acts, whether they relate to Federal subjects proper, namely, the subjects set out in Appendix 6, List 1, or to concurrent subjects, that is to say, the subjects set out in List 3, the drafting of the latter part of the first paragraph requires clarification. It is not intended that the right of the Federal Government to give directions as to the fulfilment by a Province of its Federal obligations should extend to the concurrent sphere since all the subjects included in List 3 are to be entirely provincial, except to the extent that provision may be made for their regulation

by Federal legislation. The last sentence of the first sub-paragraph of paragraph 125, should, therefore, be read subject to this limitation, and as applying to List 1 subjects only.

The purpose of the second sub-paragraph of paragraph 125 is to give the Federal Government a right of direction as to the administration of purely provincial subjects (list 2, Appendix VI) if the actions of the province in this sphere are such as to prejudice the administration of a Federal subject proper. Thus, if a Provincial Government were so administering its Public Health and Sanitation arrangements as to interfere with arrangements regarded as essential by the Federal Government for the maintenance of quarantine in ports, the Federal Government would have the right to intervene. In brief, the purpose of paragraph 125 is to ensure to the Federation such authority in relation to the Provinces as will tend to the efficient performance of the purposes for which it exists. I am afraid that statement sounds somewhat complicated, but I think that members of the Committee and the Delegates when they read it will see that it is a necessary comment upon paragraphs 125 and 126.

Marquess of Salisbury.] I am sure we are all very much helped by these statements, Secretary of State. I see no reason whatever to apologise for them, if I may say so.

*Sir Hari Singh Gour.*

12,723. There was one point upon which I may ask the Secretary of State to implement his statement. It is to this effect. In sub-paragraph 2 of paragraph 125 the words are : "to any matter which affects the administration of a Federal subject" not "any matter which may affect the administration of a Federal subject," whereas in paragraph 126 the Governor-General is entitled to interfere in any matter when any grave menace to the peace and tranquillity of India, or any part thereof, is threatened. In the statement which the Secretary of State has been good enough to read to the Committee there does not appear to be any clear line of demarcation between the interference by the Federal Government in matters which affect *in praesenti* the administration of a

Federal subject, or matters which threaten to affect in the near future the administration of a Federal subject?—It is a point of drafting. There is no distinction so far as I can see intended between the words 'affects' or 'may affect.'

*Sir Abdur Rahim.*

12,724. In the second paragraph of paragraph 125, the last words are "Federal subject" that does not include clearly concurrent subjects?—No, the second paragraph of paragraph 125 deals with Federal subjects only.

12,725. Exclusively Federal subjects?—Yes.

*Mr. M. R. Jayaker.*

12,726. It would include Reserved subjects, I take it?—Yes.

*Sir Austen Chamberlain.*

12,727. How then are the subjects which are concurrent subjects dealt with?—The administration is provincial.

12,728. I understand that the White Paper contemplates that if there is concurrent legislation the Federal legislation prevails over the Provincial legislation?—Yes.

12,729. Is there no provision to enable the Federal Government in that case to supervise and secure the due execution of the Federal law and giving it authority to intervene if, in spite of the passage of the Federal law, the Provincial Government continues to apply its provincial law?—In our proposals, Sir Austen, we go no further than to say that it is the obligation of the Provincial Government so to carry out its duties as not to compromise the decision of the Federal Government in a case of that kind. It is difficult to go further than that. I think Sir Austen will see the difficulty when I give him the most conspicuous instance of an actual case. Take the case of law and order. There is no intention under the White Paper proposals that there should be interference by the Federal Government in the administration of law and order in the Province, and that goes to show that one cannot go further than state the moral obligation upon the province in

matters of this kind to co-operate with the Federal Government.

12,730. I do not quite follow that, if I may pursue it a little further?—Please.

12,731. The intention of the Government is that where a subject is reserved for Federal legislation the Federal Government should have power to issue such instructions to the local Governments as will secure the execution of the Federal law?—Yes.

12,732. On a Federal subject?—Yes.

12,733. But the White Paper also contemplates that certain subjects will be left to Provincial legislation, but with authority to the Federal Government also to legislate if it thinks it necessary?—Yes.

12,734. Must there not be, if not the same, at any rate similar power to the Central Government to see that its Federal legislation is observed in that case as you feel necessary to secure for it in the former case?—I would have thought myself that there is this difference between the two categories. In the Federal field the Federal Government is acting under its exclusive rights and it has its Federal agents to carry out its policy in such cases as I have just quoted in my opening statement, cases like the administration of Customs, and so on, and correspondingly with certain classes of legislation—Income Tax, for instance. In the concurrent field *or* *hypothesi* even though the Federal Government may be legislating there is something in the nature of partnership between the two. The Federal Government will be dependent upon the Provincial administration for its agents. It will not have agents in the concurrent field at all. I would have thought therefore in view of what appears to me to be a difference it was necessary to state the obligations in a somewhat different way for each of those two categories.

12,735. This is rather a matter of detail that I am putting to you now?—Yes.

12,736. To take an illustration which you have given, quarantine. Will the quarantine officers in all the ports be Federal officers, or will they not be dependent upon local officers for the execution of their Federal quarantine pro-

visions?—The quarantine officers would be Federal officers.

12,737. All the Medical Officers of Health?—The Medical Officers of Health will probably be provincial.

12,738. Surely the executive officers in administering quarantine will be the Medical Officers of Health, with such police assistance, if any, as they may require?—Yes, that is so.

12,739. Then I put it to you that the particular distinction which you have drawn, Secretary of State, will not hold. But, passing from that, I put this to you at this stage to invite your further consideration?—Yes.

12,740. I also put it to you that if you feel it necessary to reserve to the Federal Government a power of concurrent legislation it follows that it must be necessary to reserve to that Federal Government a right to see that its concurrent legislation is respected, and that where it exercises that right of concurrent legislation the importance of its authority being maintained, and its orders being executed, stands on exactly the same footing as in cases where it is legislating within its exclusive sphere. When it exercises the power of concurrent legislation it supersedes for that purpose the Provincial Government?—Certainly I will consider Sir Austen's contention, but I still have this difficulty in my mind. The concurrent field is really a field of provincial subjects, but provincial subjects in which some kind of uniformity is very advisable. The intention, therefore, of having a concurrent list is not to impinge upon the field of provincial autonomy, but to retain some means by which uniformity can be maintained. If uniformity is to be maintained I feel pretty sure myself that you must take provincial opinion with you. Our proposals are not based upon any sanctions; they are based upon a willing co-operation, and that if you are going to get provincial public opinion with you the less you dot the "i's" and cross the "t's" as to the powers of interference by the Federal Government the more successful you will be.

[Marquess of Salisbury.] I do not know whether I might suggest to the Secretary of State that the statement he has

just made in reply to Sir Austen Chamberlain carries him a very long way, because if List No. III is examined it will be seen that there are a very large number of subjects which come under the concurrent powers; for instance, the regulation of the working of mines.

Earl of Derby.] Would you give us the page number?

Marquess of Salisbury.

12,741. Page 119: "Regulation of the working of factories; Employers' Liability and Workmen's Compensation; Trade Unions; Welfare of labour, including provident funds and industrial insurance; Labour Disputes." I must not make a statement, but I suggest to the Secretary of State all those come under the concurrent field and therefore it must evidently have been in the minds of those who drafted the White Paper that there would be federal legislation or might be federal legislation on all those subjects?—Lord Salisbury has quoted another category of cases which was very much in my mind when I gave my answer to Sir Austen just now. Lord Salisbury will see the difficulty if one goes the length that was just suggested by Sir Austen in the case of labour legislation. Suppose, for instance, the Federal Government passed labour legislation, we will say, a very comprehensive National Health Act or an Act for Maternity Benefit, or some bit of labour legislation, that would involve very heavy expenditure. The conclusion of Sir Austen's argument would seem to me to lead to the Provinces having that very heavy expenditure forced upon them against their will. I do not believe a system of that kind would work.

12,742. But would not that be rather a reason for not having included these subjects in List III?—No. I think not. You see, we have included them in List III as subjects upon which we wish to work to uniformity if the Provinces can be induced to co-operate.

Sir Austen Chamberlain.

12,743. Is this the kind of case that you have in mind, that the great majority of the Provinces are agreed, we will say, on a legislative working day of so many hours?—Yes.

12,744. That one Province refuses to agree?—Yes.

12,745. And that, accordingly what is desired over by far the largest part of India, is rendered impossible by the opposition of a single Province?—Yes.

12,746. That then the Federal Government should override the dissentient Province and give effect to the general will of the Indian Legislatures. Would that be a fair illustration of the case you have in mind?—Yes; the Federal Government would pass such an Act. I presume.

Sir Austen Chamberlain.] Then suppose the dissentient Province declines to administer the Act and continues to work the longer hours—

Marquess of Salisbury.] Or abstains from administering the Act.

Sir Austen Chamberlain.]

12,747. Yes, or abstains from administering the Act; and in that Province, factories continue to work the longer hours, thus establishing a ruinous competition with the Provinces in which the Federal Act is administered. What is the remedy—sweet reason?—I can see no remedy of sanction. What sanction could you apply to a situation of that kind?

Sir Austen Chamberlain.] If it were in the field or reserved legislation you would give authority to the Central Government to direct the Provincial Government and its officers to enforce the law. If you tell me that sanction is ineffective for the purpose of the joint list, will not it be equally ineffective for the other, and if it is effective for the Federal list, why should it not be effective for the joint list of subjects?

Marquess of Salisbury.

12,748. Might I in that connection remind the Secretary of State of (a) in paragraph 70: "Securing the execution of orders lawfully issued by the Governor-General"? That is part of the special responsibility of the Governor. I presume that in the case of an Act of the Federal Legislature, if a Province was recalcitrant as in the case which Sir Austen has put, the Governor-General would direct the Governor to carry out the law as it is laid down in

the Act and the Governor thereupon would use his special responsibility under paragraph 70 ?—No. I do not think in the general Federal field outside the special responsibilities of the Governor-General, the Governor-General could issue an order of that kind.

12,749. After all, the Governor-General would act by the advice of his Ministers in a matter of this kind. I suppose, in assenting to the Federal legislation, he would act by the advice of his Ministers ?—Yes.

12,750. Once he had done that, then surely it would be a lawful order of his to the Governor to carry it out ?—No—except in the field of his special responsibilities.

Lord Rankeillour.

12,751. Secretary of State, on that would not it be possible for the Central Government to carry out the contemplated orders arising out of Federal legislation and to charge the Province with the cost ?—There is no machinery for getting the money.

12,752. But the money for the Province comes through the Central Exchequer, does it not ?—Income Tax would.

Dr. B. R. Ambedkar.] I think the answer to Sir Austen Chamberlain's question may be given somewhat in this form : So far as the concurrent legislation is concerned, it is, I think, laid down in one of the paragraphs of the White Paper that any law in the concurrent field passed by the Federal Legislature will override a similar law passed by the Provincial Government. Consequently, if there was a conflict of law passed in the concurrent field between a law passed by the Centre and one passed by the Province, *inso facto*, by the provisions of the White Paper itself the Federal law will have an overriding force as against the Provincial law.

Sir Austen Chamberlain.] That is so. That is the point that I put earlier to the Secretary of State.

Dr. B. R. Ambedkar.] That is I think the position so far as the legislation is concerned.

Sir Austen Chamberlain.] So I understand.

Dr. B. R. Ambedkar.] So far as administration is concerned, I think the position will be that the Federal Executive will have the authority to issue directions and instructions to the Provincial Government through the Provincial Governors with regard to the administration of a concurrent law passed by the Federal Legislature, and the Governors, I think, would be bound to obey them.

Marquess of Reading.] That is exactly the point upon which the Secretary of State has given an answer in the negative.

Sir Austen Chamberlain.] Yes, I put that to the Secretary of State. The Secretary of State's explanation differentiates between the case where the Federal Government has legislated in the sphere which is reserved to Federal authority. In that case, the Secretary of State says the intention of the Clauses we are discussing is that the Federal Government should have power to give directions for the execution of that law. I put it, if I may, to the Secretary of State again. In the case of legislation reserved to the Federal authority, the Federal Government may follow up its legislation by orders to the Provincial Governments and authorities to execute that law. In the case of legislation in the concurrent field, if the Federal Government does legislate, the Federal law overrides the Provincial law and is the only law of the Province or of India ; but, in that case, according to the Secretary of State, the Federal Government has no power to issue directions for the execution of its law or to secure that it is executed. On what ground can you justify that distinction between the administration and execution of two laws equally binding, passed by the same authority, one of which it may enforce and the other of which it may not enforce ?

Sir Manubhai N. Mehta.] I was going to strengthen this argument by reference to Section 127, which applies to the Indian States : "It will be the duty of the ruler of a State to secure that due effect is given within the territory of his State to every Act of the Federal Legislature which applies to that territory."

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from this very important point raised by Sir Austen to the States? We have got to come to that. I cannot help thinking that it will only confuse the matter. We do want to get this point clear.

*Chairman.*] Sir Manubhai Mehta, it might be well just to clear this matter up as regards the Federation and the Provinces of British India and then to relate the matter to the States afterwards.

*Sir Manubhai N. Mehta.*] Yes.

*Witness.*] My answer may sound to be rather an illogical one. I quite agree with Sir Austen. Legally and Constitutionally, there can be no distinction between one Federal Act and another—I accept that contention entirely. Yet, I do feel that politically it is worth distinguishing between the Federal field and the concurrent field. The existence of a concurrent field has occasioned a good deal of criticism amongst the adherents of Provincial autonomy, and if any action that we took went to give the impression that the concurrent field was really going to be a Federal field under another name, I think we should see a very general opposition to a proposal of that kind from large sections of public opinion in India. That makes me think that it is wiser to keep a distinction between the two fields, and to keep in mind the fact that for the purposes of administration the concurrent field is a Provincial field. It is our intention that the Federal Government should only come into the concurrent field when there is a general desire for uniformity over some field of legislation or administration. Having said that, I do not in the least wish to suggest that my mind is closed to suggestions of this kind. My advisers and I will gladly think over these points again.

*Sir Austen Chamberlain.*

12,753. I am very much obliged and I hope the Secretary of State will do so. My Questions all arise out of the modification which he has made in the Clause by the opening statement that he made to-day. If I might add just one more question: Would he in turning this matter over consider whether it can ever be wise to encourage an authority or give power and, therefore, encouragement to an authority to legislate with-

out giving that authority any power to enforce its legislation, and whether that must not have the result of bringing all law into disrepute?—Sir Austen raises a new point in his further question, the point as to whether there should be sanctions or not.

12,754. I do not say sanctions but power to enforce?—It comes to the same thing, does it not?

12,755. Do you call it sanctions in the Federal field? It is not punishment; it is merely authority?—Authority to give an order; it is no more than that.

12,756. Authority to give an order and to oblige the local authorities to execute the Federal law?—But you cannot oblige the units to execute an order if they refuse to. I hope they will not refuse but I myself cannot see what power you can apply to a Provincial Government.

12,757. I beg the Secretary of State to consider these answers very carefully at his leisure; but surely what he has just said amounts to saying that Section 125 is merely a piece of paper which is worthless for all practical purposes, even in the Federal sphere if a local authority chooses not to obey the directions of the Government?—No; I would not admit that comment at all upon my answer. Section 125 states the duties of the Federal Government and the duties of the Provincial Government under the Constitution. It is to be assumed that the Parties that enter the Federation will accept those duties. When, however, it comes to the power to enforce a decision then a series of very difficult questions arise and Sir Austen will find that in these proposals we are following very much upon the lines set in other Federations and so far as I know there is no sanction in any Federation except possibly the new German Reich to impose the will of one section of the Federation upon the other.

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12,758. The United States?—I do not think there is any power to do it. The United States, of course, have got their own agents for certain purposes, and I would hazard the opinion that it has been a very weak reed on which to depend in the case of the United States.



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*Sir Austen Chamberlain.*

12,759. Have they not got Federal Courts, Federal Officers and Federal Forces, which have, on occasion, been used by the President in Washington to enforce the law in a particular State?—For carrying out exclusively Federal objects.

12,760. But if the Central Legislature has found it necessary to legislate, surely that is a central object?—It is not upon a Federal subject. Sir Austen seemed to me to imply that I was rather hair-splitting when I gave that last answer. I was not; it is a distinction.

*Sir Austen Chamberlain.*] I do not think the Secretary of State is hair-splitting but I think that his argument tends, to destroy the whole value of the safeguard which he has offered to the Committee in relation to the purely Federal subject. That if his answers in regard to my questions in relation to legislation in the concurrent field are to be accepted, then the safeguards which he offers in the purely Federal field are worthless. I am sure he does not mean that. That is why I begged him to consider those answers very carefully.

*Lord Eustace Percy.*] May I ask the Secretary of State at the same time to consider another aspect of this question: Whether he is not in these proposals as they are at present before us making a much more serious attack on Provincial autonomy than he would be by accepting Sir Austen Chamberlain's suggestion, because if you give the Federation a power concurrently or otherwise to legislate on a subject you cannot constitutionally keep back the power from it of appointing agents to carry out that legislation; and in the instance given by Sir Austen Chamberlain, if a Provincial Executive refused to carry out or nullify by exemption the Federal law on hours of labour there would be one alternative before the Federation which would be in all its Acts in the concurrent field, to provide its own executive servants. That is not precluded by anything in the White Paper, and I think cannot be. The result would be that if it is important for India to have uniform legislation and administration of a particular subject, such Acts would

always contain special provision for a Federal Executive Service to carry them out, because otherwise under the Constitution the Federation will have no power to control their execution at all. May I add that I think is what the experience of the United States has been: Just because the Federation has no power to give directions to New York as to how its Preventive Officers are to carry out prohibition, they have had to provide Federal Officers of their own and the conflict between the Federal Officers and the State Officers has nullified the execution of the legislation.

*Earl Peel.*

12,761. I just wanted to ask one question, if I might. The Secretary of State stated very strongly that he thought that any power in this concurrent field given to the Federal Government to enforce a general law in the concurrent field would arouse a good deal of anxiety in certain Provinces, and would be construed as an attack upon Provincial autonomy. Now, I was going to question that point. Of course, the Federal Government would never initiate any legislation I presume on these concurrent fields of the nature that we have been discussing unless they had had a conference with the representatives of the Provinces and there was pretty well a general agreement that this legislation should be carried out. We were taking the case of a Province which did not agree. First of all, I say, the legislation would never be carried out unless there was a general agreement and if there was one Province which was so recalcitrant as to upset the whole balance, would it not be felt in that case by the other Provinces that really it was quite reasonable that the Federal Government should have a power of enforcing and would not raise the wide fear that the Secretary of State suggests, that there is a general attack intended upon the whole independence of Provincial autonomy?—That very well might be so in certain cases. The difficulty arises, though with the big subjects like subjects 9 and 10 of List 3, Criminal Law and Procedure. With a field as wide as that the Federal Government might really undermine the whole basis of the administration of law and order in the Provinces.

12,762. The case which was taken by Sir Austen, I think, was some social legislation where a good deal of expenditure would be required. It is difficult to me to conceive that the Federal Government would really impose a law of that kind upon the Provinces unless there was very general agreement that that money should be spent in that way, and all the Federal Government would do would be to set its seal by its legislation in the concurrent field upon the general agreement in the Provinces?—It is because I want things to work out like that that I feel the less one talks about compulsion in the Provincial field, the more likely you are to get Provincial Governments to work together for uniformity.

12,763. I see, of course, the technical difficulty of Sir Austen's point—perhaps it is more than technical?—Sir Austen's case, if I may say so, is an easy case, and it is difficult to dispute it. The much more difficult case is the case I have just mentioned, namely, criminal law and procedure.

Sir Akbar Hydari.

12,764. Would not what Lord Peel has said with regard to legislation of that kind by the Federal Government he ruled out by the provision in the second sub-paragraph of Proposal 114? "The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces." In most of this Labour legislation it would probably indirectly impose a financial obligation upon the Provinces and if there was any one Province which did not desire legislation on that subject it could very well appeal under the sub-paragraph and say that it should not be a subject for the concurrent field?—I think we have got to take the second paragraph of Proposal 114 into account. I would ask the attention of the Committee to that paragraph. I am inclined to think that upon further consideration we may find that the paragraph goes too far. For instance, in the case of International Labour Agreements, we may find upon further consideration that it goes too far, but even so, if it does go too far, I can see no way of compelling a Provincial Government to meet obligations

of this kind if it is determined not to meet those obligations; but, in making a refusal of that kind, the Provincial Government is repudiating the whole basis of the Federation and I am assuming that a Provincial Government will not repudiate the basis of the Federation.

Sir Akbar Hydari.] What I was trying to point out was that really that particular sub-paragraph imposes this obligation. That legislation in a concurrent field will be more a matter for the uniformity of legislation with the concurrence of all the Provinces. If there is any legislation of a kind which has not got the concurrence of a particular Province, then by that very fact it is not within the power of concurrent legislation, and, therefore, the difficulty which has been raised by Sir Austen Chamberlain will not arise. I am trying to point out that there is so much restriction imposed by this particular sub-paragraph in the power of the legislation of the concurrent field that it is more for uniformity of legislation that this has been provided for and that this uniformity of legislation could be only if all the Provinces agreed.

Lord Eustace Percy.

12,765. Does not that make all the more forcible the danger that I have alluded to: that a *fortiori* the Federal Government will always, where possible, provide its own service and pay it itself, and therefore will get round that Paragraph 114?—I would have thought that would not be the case. *Ex hypothesi*, the kind of cases that we have in mind are cases that will involve heavy expenditure.

12,766. Not limitation of hours of labour in factories?—No; that may perhaps be a case pointing the other way, but many of these other cases will be cases involving considerable expenditure, and I would have thought that the Federal Government would be most reluctant to undertake expenditure of that kind in the Provinces.

Marquess of Reading.] May I ask the Secretary of State one point arising from what he has said in order that we may have clearly in our minds how the position stands? Sir Austen Chamberlain has put the alternatives very clearly, but what I do not follow is what

is the position under the Constitution according to the answers that the Secretary of State gave, assuming that there is a concurrent field in which the Federal Government has passed legislation?—Provincial Government abstains or refuses to carry out that law. That is a very definite point which was put and which might happen. I understand the Secretary of State to say: "Well, it is provided that it must obey that law and that the Federal Legislation will prevail, and it is to be expected that the Provincial Government will carry out its duties." So far, speaking for myself I quite follow. Where I got into difficulty, and the reason I am putting this question to the Secretary of State is, assuming that the Province, for one reason or another, into which it is not necessary to enter at the moment, refuses to carry out the law—it may be wilfully; it might be out of pure desire to make a constitutional difficulty; you cannot leave out such considerations, in my opinion, when you are considering these safeguards; you must assume possibilities of that kind. Suppose that happens, or, even apart altogether from constitutional agitation, suppose that the Provincial Government refuses to do it.

Marquess of Salisbury.] Or merely neglects to do it.

Marquess of Reading.

12,767. Yes; I used the word which Lord Salisbury used—"abstains"—which I think is quite a good word for it. Assuming that to happen, are we to understand that under the constitution which we are now to recommend, whatever form it may take, that no power is to be given to the Federal Government to ensure that the Provincial Government should, in the case that we have put, carry out what is said to be the law of all India and prevailing over that particular Province? Are we to assume, as I do from what the Secretary of State says, that nothing can happen; that there is no means of enforcing it? Is that right?—Lord Reading is dealing, I understand, only with the concurrent field?

12,768. Yes, that is right?—My answer would be that in the concurrent field I can see no practicable method of coercion after looking at the experience of other Federations. This is not a new

problem. It is a problem that has been inherent, I think, in every Federation. The noble Marquess will find, I think, if he looks to the Constitution of the Dominion of Canada, so far as I remember, that there is no power of coercion.

12,769. I want to make one suggestion with regard to it. Is it not possible to legislate that the Governor shall have the power in that case? He has all the means of providing under the separate paragraphs that we have discussed. Is not it possible then for the Governor to have the power and, indeed, the duty if a position arises such as I have just described, to see that the Provincial Government does carry out the Federal law? He could do it either by means of his own Act, or he could do it by means of an ordinance, or he has means even of raising the money that is necessary under the powers that are given him. It is most remarkable, I agree, but is it not better that that should be the position than that we should leave the Constitution in this form, that there is no power in the Federal Government to see that the Provincial Government carries out what is declared to be the Federal law for all India, including that Province?—We can consider Lord Reading's proposals. They appear to me to go a long way. I do not turn them down on that account at all, but they would appear to me, at first sight, to bring the Governor-General acting on his own discretion into a field other than the field of his special responsibilities.

Chairman.] Before I call on Sir Austen Chamberlain, it occurs to me that it may be to the convenience of the Committee that we should have a round of questions this morning and that further consideration of these matters should be reserved until we have the discussions later on.

Sir Austen Chamberlain.] If I may put a question for the purpose of drawing the Secretary of State's attention to a particular aspect of the matter, which was just alluded to by him, without his seeing I think how serious it was, he gave an illustration of a case in which the Federal Government might wish to legislate in the concurrent field, an occasion when they were implementing an

obligation undertaken by an international convention, if the Federal Government has accepted an international convention imposing certain obligations on it.

Marques of Salisbury.] Labour.

Sir Austen Chamberlain.

12,770. Take a Convention like the Opium Convention or a convention dealing with the manufacture or trade in arms. One could give other instances. If the Federal Government has accepted such a convention it will be no answer to the complaints of another nation aggrieved by its action that it has no power to enforce the convention within its own territory?—Sir Austen no doubt remembers that this is no new difficulty.

12,771. I remember very well the difficulties which have arisen in the international relations of America on this very ground, and that is why I venture to think that we should be wise to prevent that difficulty arising in the case of India?—Sir Austen I think, if I may say so without offence, is somewhat magnifying this difficulty. The kind of questions that I think he has in mind would I believe, in nine cases out of 10, be exclusively Federal questions. In that case the Federal Government have the power to give directions. For instance, in cases like opium and the traffic in arms, those are both Federal subjects. The power to give directions, therefore, really exists.

12,772. Is the manufacture of arms a Federal subject?—Traffic in arms. I am not sure at the moment about the manufacture of arms.

12,773. The growing of the poppy for opium?—Yes; we would include that in the traffic in opium.

Marquess of Salisbury.

12,774. Does not the Secretary of State agree that if it is impossible to enforce a law passed by the Federal Legislature in the concurrent field it must be equally impossible to enforce the law passed by the Legislature in its own field? Did not the Secretary of State say that there was no means of enforcing the law?—In the case of the great extent of the Federal field, the Federal Government will have its own agents.

12,775. For instance, the regulation of companies, the development of industries, all those are in the Federal field alone. If it cannot enforce the other labour legislation which is in List III, how can it enforce the labour legislation in List I?—In the Federal field it can have what agents it wishes, but in the provincial field the agents are Provincial agents.

Mr. Morgan Jones.

12,776. May I ask one question on the point which Sir Samuel Hoare has been putting, that there is no power to compel a province to co-operate with the rest. In paragraph 70: "In the administration of the government of a Province the Governor will be declared to have a special responsibility in respect of . . . (g) securing the execution of orders lawfully issued by the Governor-General." When the Governor-General attaches his signature to a law passed by the Central Legislature has that the effect of an order to the various Provinces?—No, paragraph 70 deals only with the field of special responsibilities.

Earl Peel.

12,777. I was going to ask this question of the Secretary of State: When you look at page 119 at the list of concurrent powers, they look very formidable indeed. They seem to suggest legislation of all kinds of expensive controversial subjects on which much money may be spent, but I am not quite sure how far all that is conditioned by paragraph 114 which says as regards this concurrent legislation it "is to secure the greater measure of uniformity which may be found practicable." That really suggests, to my mind at least, that it is not expected that the Central Government will deliberately go and legislate on a number of these subjects, but will only pass a law to get a measure of uniformity when you get general agreement because that is what the words "which may be found practicable" really mean, I think?—That is our intention.

12,778. And have we not been rather enlarging, as it were, the difficulties which may arise owing to this concurrent legislation and the necessities of enforcing all sorts of laws which really would not be passed at all?—I think we have.

The difficulty arises, however, with such subjects as Nos. 9 and 10, the Criminal Law and Procedure; subjects which, as Lord Peel knows, excite the greatest suspicion in the minds of large numbers of people in India as to where and how questions of that kind will be administered.

*Archbishop of Canterbury.*

12,779. I just wanted to say, Secretary of State, I confess it seems to me on the discussion that you cannot, as you admit, logically give power to the Governor to see that the Federal law is carried out in the exclusively Federal subjects, and deny ultimately some such power in the concurrent sphere where a Federal law has been passed, and which must overrule Provincial law, but, although I see that, I also see your point in regard to the concurrent sphere where Provincial officers are required, and where naturally provincial assent is of more importance. I merely suggest would it not be possible to make provision that no Federal law should be introduced in the concurrent sphere without providing that before it is brought in there should be a conference with the representatives of all the provinces concerned. That would acknowledge the special position in regard to any Federal law in the concurrent sphere, because I gather you do not contemplate that being brought in unless, there is general agreement. If that general agreement is ensured by some such conference before any Federal law in that sphere is introduced surely there could be no objection then to secure that, if the Federal law is passed, then the powers of the Governor-General come in to see that it is enforced?—I would have thought that almost inevitably there would be that kind of consultation between the Federal Government and the representatives of the Provincial Governments. It would, however, appear to me at first sight to be difficult to put it actually into the Constitution Act.

*Sir Reginald Craddock.*

12,780. My Lord Chairman, may I put one question?—May I just finish. For instance, supposing one province in a conference of that kind held out against the others; I would rather myself not allow a veto of that kind to a single

province. I would rather the Federal legislation was passed, if all the Provinces except one required it, even though the single Province might hold out afterwards. I would prefer not to put a veto into the hands of a single Province.

*Archbishop of Canterbury.*

12,781. My point rather was that if in that case a single Province did object then there would be no such reflection on provincial autonomy if in that case the Governor-General was armed with all the powers in respect of this Federal law in the concurrent sphere as he possesses in regard to any law in the exclusively Federal sphere?—I think His Grace will see that it is very difficult to define the extent of Provincial opposition that would result in a veto proposal of that kind. It occurs to me offhand that you might have a Province holding out, but it might be the one Province that was chiefly affected by a particular proposal. That goes to show how difficult it is to define it in a Constitution Act.

*Sir Reginald Craddock.*

12,782. I just wanted to put one point to the Secretary of State. Although the Provincial Government itself might want to abstain from enforcing the Act, so far as the Courts, Civil and Criminal, are concerned, as the Federal law would prevail over the Provincial law in the law of the Constitution, those Courts would have to enforce the Federal law when the case came before them?—That is so.

*Mr. M. R. Jayaker.*

12,783. You have provided for one safeguard, I think, in paragraph 114, the last clause, against such legislation by the Federal Government as against the Provincial legislation on the same subject?—Yes.

*Mr. M. R. Jayaker.*] May I ask one more question?—Does your Lordship desire that I should keep back my questions till my turn comes?

*Chairman.*] I think it would be better that as soon as possible we should return to the normal method.

*Mr. M. R. Jayaker.*] If your Lordship pleases.

*Chairman.*

12,784. Secretary of State, would it be well, do you think, that I should invite Lord Salisbury now to continue over the whole range of these subjects, paragraphs 125 to 129, or would you refer that we should pay attention to the earlier paragraphs only?—I do not mind at all.

*Chairman.*] If my noble friend will allow me, I would suggest that he should ask questions over the whole range.

*Marquess of Salisbury.*

12,785. If that is the wish of the Committee, then I perhaps ought to take the second sub-paragraph of paragraph 125, as we are upon that paragraph. There it is quite clear that in the realm of Law and Order the Governor-General is able to give an absolute order to the Governor?—I think Lord Salisbury is dealing with paragraph 126, is he not?

12,786. "The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject." You are perfectly right, it is my mistake. I apologise; it is 126 and not 125. There, there is no question that the Governor-General can give an absolute order in his discretion to the Governor as to all matters which may be said to involve a grave menace to the peace and tranquillity of India or any part thereof?—Yes.

12,787. Therefore, in that field, the field which we know as law and order, at any rate in extreme cases the Governor-General has absolute power to give an order?—Yes.

12,788. And in that case the Governor would be under obligation to carry it out?—Yes.

12,789. And he would in that case use his special responsibility for the purpose?—Yes.

12,790. It is not like the last discussion where there was no question of special responsibility. In this case, there is?—Yes.

12,791. It follows then, does it not, that in the case of great disorder, the Governor-General would be really respon-

sible in the last analysis for public safety?—Yes; that would be so.

12,792. And therefore all the difficulties to which we I am afraid have rather repeatedly called your attention, of Parliamentary pressure which might be put upon the Governor-General, I mean the pressure from the Central Legislature which might be put upon the Governor-General would apply. I do not think, Secretary of State, you admitted the difficulties, but the difficulties we suggested to you would apply?—Yes; always remembering that the Governor-General will have, no doubt, advice from the Federal Centre, but he will also have advice from the Governors in the Provinces.

12,793. No doubt he would have advice, but things might be made very difficult for him by the action of the Central Legislature and the responsible Central Government?—I do not see why they should be.

12,794. I do not say they necessarily would be; I do not want to over-state the case at all; but, in a case where public feeling was very much excited, let us say some communal difficulty—I dislike using the word "communal" because I do not want to import any heat into the discussion whatever and I know what susceptibilities are aroused by those words—but just as an example some communal difficulty might arise. The communal majority in the Central Legislature would be excited and would put pressure through the Ministers upon the Governor-General to exercise his authority in the Provinces, or to abstain from exercising his authority in the Provinces?—I suppose that might happen, but I still think that it would not deflect the Governor-General from the course that he thought he ought to take. The pressure may come in one direction, on the one hand; it may come in the other direction from the Province, or it may come as a third alternative from Parliament and the Secretary of State here.

*Marquess of Salisbury.*] I am quite satisfied to call the attention of the Committee to the point.

*Archbishop of Canterbury.*

12,795. Will you allow me just to ask a supplementary question which might



clear the discussion? It is a question of definition. Is there any difference between the use of the word "directions" in the first part of paragraph 125 and the word "instructions" in paragraph 126?—There is only this small difference. In substance, there is no difference. We have as a rule in the phraseology of the relations between the Governor-General and the Governors tended to use the word "instructions," but there is no difference in substance.

12,796. But "instructions" as a rule in the rest of the White Paper means instructions for dealing with matters generally, whereas "directions" as used in regard to any particular matter. It is not presumed in 126 that that refers merely to instructions of a general kind, but rather to directions for a particular case?—We can make that point clear; it may be necessary to make it clearer.

Archbishop of [Canterbury.] Thank you, Lord Salisbury; I beg your pardon.

Marquess of Salisbury.

12,797. Not in the least. Then I have nothing more to suggest on paragraph 126, but I go to paragraph 127. Now, the first point which seems to be necessary to clear up is what will be the situation with respect to the States which do not join the Federation?—They do not come directly under the Section. If the Secretary of State thinks this is an improper question, I hope he will stop me. I presume the Political Department in India will continue to exist irrespective of the States who do not join the Federation?—The Political Department will continue to exist for all purposes, both for the relations with the States that do not join the Federation and for the relations with the States that do join the Federation in the field of paramountcy.

12,798. Will there be a special Minister for that purpose—a part of the staff of the Governor-General?—There will not be a special Minister for the reason that paramountcy is kept outside the Constitution altogether. The Governor-General will, however, have what staff he requires for dealing with this kind of work, much of which is now dealt with by the Political Department.

12,799. He will have a staff for that purpose only—a paramountcy staff, as it were?—As Viceroy, yes.

12,800. That will operate not merely in the case of the States which do not join the Federation, but all the paramountcy points of the States which do?—Yes.

12,801. And in the case of the States which join upon a different basis—because of course they will not all join exactly on the same basis, will they?—Yes and No. They will accept the basic conditions of the Federation, but I can conceive that within those basic conditions there will be variations of the way in which the particular subject might be applied.

12,802. Supposing in a particular case a particular State does not accept the jurisdiction of the Federation in a particular Department, the old Political Department of the Government of India will deal with that State, even though it is in the Federation?—It would go on just as it is now.

12,803. All the paramountcy points would go on?—Yes.

12,804. I shall, of course, be very brief in my questions. The Secretary of State will see that a great deal of the previous points raised in the Committee this morning have to be repeated and have to be borne in mind in respect of the States. There will be certain Federal laws which will apply to all the units of the Federation, will there not?—Yes.

12,805. How will the questions be put? How will the Federal Ministers, the Federal Government, enforce its authority in respect of Federal laws which apply to the States?—May I just say that I hope the representatives of the States will realise that in putting these things in their crude form I do not intend to be in the least disrespectful. It is only to be quite clear?—Either the Federal Agents in the event of there being Federal agents in the States, or if not Federal agents, the States' agents for themselves.

12,806. Will there be Federal agents in the States?—Yes; there might be.

12,807. But will there be?—It depends upon the Treaties of Accession.

12,808. But has the Secretary of State not contemplated that in certain cases

there must be Federal agents in the States? For instance, there is a certain assessment law which must be enforced in the States. I think we had it from Sir Akbar Hydari that in a case of emergency there would be a contribution from the States upon a prescribed basis—I think that was the phrase which he used. Who will see in that case that the prescribed basis is obeyed?—We have contemplated that there will be Federal agents for certain purposes. For instance, I imagine there will be Federal agents for posts and telegraphs. It is, however, possible that in certain States for certain of the Federal subjects the Federal Government may rely upon the administration of the States. For instance, with customs: When it comes to the assessment of the States' contribution in times of emergency, there, I think we have not contemplated that the agency of collection should be a Federal agency, but that we should rely upon the States to produce the sum of money; so that although the basis might be prescribed, I presume by the Constitution Law there would be no means of enforcing it, seeing that the prescribed law was duly followed.

Marquess of Zetland.

12,809. Is it not covered by paragraph 125 and 127?—Yes. If Lord Salisbury will look at 129, he will see there "The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State Member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled."

Marquess of Salisbury.

12,810. So that what is contemplated is merely instructions, but there are no means of seeing that the instructions are fulfilled?—There is always the ultimate power in the field of paramountcy.

12,811. Would there be power in paramountcy to see that the instructions were fulfilled?—Yes.

12,812. And would that apply to Federal legislation applying to the States—for instance, the regulation of companies, which belongs to List I?—Yes;

in theory it would. Lord Salisbury will, of course, remember that the Federal Government will be composed of representatives both of the States and of British India?

12,813. But I am assuming that a law has been passed in the Federal Legislature by a Majority; it might include a majority of the States or it might not, one does not know, but a law is passed in the Federal Legislature applying to the regulation of companies or the development of industries. Both of those belong to List I of Appendix 6; those apply, therefore, to the States (Members of the Federation, of course) as they do to the Provinces?—Yes.

12,814. Now I want you to tell the Committee, if you will be so very kind, as to how a law of that kind is going to be enforced?—It would be the law of the State. The State would have surrendered that part of its sovereignty and the law would be a valid law in the State.

12,815. There would be no sanction?—No; there would be no sanction. I am not contemplating that the Federal Government should march an army into a State to enforce a law.

12,816. I certainly do not think that, but I wondered how the Secretary of State contemplated that this Federation will work?—I contemplate both the States and the Provinces carrying out what is the competent law of the land.

12,817. I do not think the Committee would wish me to pursue it further because it is quite evident that I shall only cover very much the same ground that has already been covered, but, if I may respectfully say so, when the Secretary of State comes to consider all that has passed this morning, all the difficulties apply to the States just the same as they apply to the Provinces?—Certainly.

Archbishop of Canterbury.

12,818. May I add to that, when you were asked previously by Mr. Zafrulla Khan as to what would happen in the case of a default by a State Member of the Federation, you said that in the case of one default, to say nothing of a series of defaults, the Viceroy would

have the power of intervening under his power of paramountcy?—Yes.

12,819. What precisely would these powers of paramountcy in such a case involve?—It is impossible to say, and can anybody suggest what they would involve?

*Marquess of Reading.*

12,820. The mere fact of there being paramountcy puts great pressure upon any representation that may be made by the Viceroy?—Certainly.

12,821. And consequently it does not become necessary to do anything more?—That is so.

*Archbishop of Canterbury.*

12,822. I have already asked very many questions. With regard to paragraph 128, Secretary of State, where you say, "it will be a condition of every such agreement that the Governor-General shall be entitled, by inspection or otherwise, to satisfy himself that an adequate standard of administration be maintained," the word "inspection" seems to imply that there will be some Federal officer of that kind in the region of the State Member to carry out such duties of inspection?—It does.

*Marquess of Reading.*

12,823. Secretary of State, first of all, I want to say with reference to the suggestion I made to you earlier following upon Sir Austen Chamberlain's questions, I hope you will not take it that I have definitely made up my mind on a question of that kind; all I am wanted to do was to put it to you for consideration. I do see the difficulties, but I am anxious that something should be found to meet them?—I am very much obliged to Members of the Committee for raising these doubts; there are doubts which we must take into account.

12,824. May I just put this to you in relation to what you have just said regarding the States. Of course, one knows in regard to the States that the Viceroy because of the relations between the States and himself as the representative of the King, really has very little difficulty, and the States are always ready

to fall in with what comes from him; but, as I understand from what you have said just now, there is a power in the Viceroy to enforce, if it became necessary, by resort to the Doctrine of Paramountcy. It is not necessary to particularise, as you pointed out. That does follow as a matter of course, does it not?—Yes. That is so.

12,825. What I mean by that is that if the Governor-General or Viceroy issues letters of instructions or directions, which ever you may choose to call them, to a State to carry out what it is the obvious duty and obligation of the State to perform, the State will either do it or it becomes in default and then there are various means of putting pressure upon the Ruling Prince and his government which would bring about what you desire. There is no difficulty in that?—That is so; yes.

12,826. The point I wanted to put to you on this (I do not want to particularize any more than you have done) was this, that that does seem to indicate that in relation to the States, should such a thing happen, failing to perform any obligation undertaken, there is something in the nature of a power to enforce the obligation. That already exists, as I understand, by the position as between the Viceroy and the States?—Yes, a moral obligation.

12,827. It is, of course, a different obligation from that arising between the Federal Government and the Provincial Government. The one is purely constitutional between the Federal Government and the Provincial Government and depends entirely on what is in the Constitution, does it not?—Yes, and in drawing the distinction Lord Reading no doubt will remember this fact which has some bearing on his point. That in the case of the States there is no concurrent field at all. The difficulties we were discussing earlier this morning were not connected so much with the Federal field as with the concurrent field.

12,828. I agree as to a large part of it, but, forgive me, not exclusively. Of course, I understood the answer which was made to one part of Sir Austen's question was that, apart from special responsibility, there was no sanction pro-

vided even apart from the concurrent field?—I think I would still say that the sanction in both cases is in the nature of a moral sanction.

12,829. I was only directing attention really to this for the purpose of giving consideration to it, if you think that it still requires it, as I venture to suggest to you it does?—Yes.

12,830. In the relations between the Federal Government and the States, backed as they are by the prerogative powers of the Viceroy and also the reserved powers of the Viceroy with the States, there is a very definite relation which enables the Viceroy to obtain performance of any obligation which is imposed by him or the Federal Government upon the State?—Yes.

12,831. That is clear. I wanted to make it quite clear. I want to draw your attention, Secretary of State, to this: That is exactly what you fail to have in your relations between the Federal Government and the Provincial Government, because I have pointed out, and you agree, the reason why no doubt there is a difference between the two positions?—Yes.

12,832. But there is this as between the Federal Government and the Provincial Government: There is not that power to enforce an obligation, and it is exactly in respect of that that some of the questions were put to you this morning for your consideration?—Yes; I will certainly take them into account, always remembering, as I say, that there is this difference between the two cases, namely, that in the case of British India there is the concurrent field and in the case of the States there is not a concurrent field.

12,833. Yes, but it does introduce the same principle?—I agree.

12,834. Although it is much more difficult to deal with it in a specific form in relation to a concurrent Act than there is in the other. May I make one last suggestion in regard to that—I do not want an answer to it; I will only just ask that it may be considered?—Yes.

12,835. Is it not possible to have, in relation to the Provincial Government and to the obligations which it must

perform because of Federal legislation, some general provision of the character in Proposal 129, making allowance, of course, *mutatis mutandis* because there are different provisions? I do not want to press it and I do not ask for an answer. I just ask that you would consider it?—Yes.

12,836. I can see myself there is a very great advantage in having some general provision which would enable the Federal Government to give the order and perhaps also to provide means of carrying it out without being too specific. That might involve a little difficulty?—Yes. I will take into account Lord Reading's suggestion.

12,837. The only other point I wanted to ask a question about is in relation to the carrying out of Federal Legislation in the States. I am dealing, of course, with a State which has acceded by its treaty to the Federal Constitution. Suppose the State is not carrying out its obligation, there would be power, as I understood from what you have said and also from what has appeared before, in Federal Agents inspecting and reporting?—Under No. 128 we make provision for that purpose.

12,838. But is there any power in the Federal Agent actually to execute the Act; is there only the power of reporting? That is what I wanted to know. It is one thing to say that he shall inspect and then report to the Federal Government or to the Governor-General. That I follow is already here, but suppose something is not being carried out that ought to be carried out, is there to be power in the Federal Agent to do it if the State does not itself comply with the instructions?—There is no provision included in these proposals. We have assumed that a question of that kind might be raised in the Instruments of Accession. It might well be that in the Instruments of Accession the States and the Crown could agree upon a certain method of procedure, but we have assumed that that was more the place for a definition of that kind than the Constitution Act.

12,839. And also I suppose you would take into account that you have the power under Proposal 129 which would enable you to deal with it and also the paramountcy?—Paramountcy and also

whatever might be included in the Instruments of Accession.

12,840. Certainly, and that would make really complete provision. That is all I was anxious to see; that there was complete provision to deal with such a case as might happen, without having anything in the Constitution such as empowering the Federal Agents to go forward and do the acts themselves. For myself, what you have pointed out, Secretary of State, really does give the power to carry out all the Federal obligations without that?—You see, Lord Reading, in all these cases, both concerning British India and the States, we have always got to remember that the agency upon which we must rely is mainly a local agency, namely, the police and the courts of the Provinces and the police and the courts of States.

Marquess of Reading.] Yes, I agree to that. I was only putting it to you because something had indicated during the course of the discussion that this would be raised and I was anxious to see that I had understood that there are various means of dealing with it which makes it unnecessary to give the power to the Federal Agent to go forward into the State to do the act. That is all I want to ask.

Archbishop of Canterbury.

12,841. Adding to that again a small point, Proposal 129, to which Lord Reading has referred, speaks specifically of general instructions, again seeming to imply that that does not deal with particular cases, and I suggest again that that wants looking into?—Yes, we will look into it.

Marquess of Reading.] The word "General" may have to be taken out.

Archbishop of Canterbury.] Yes.

Mr. Isaac Foot.

12,842. I only want to put one question, my Lord Chairman, that is having regard to an answer that has already been made by the Secretary of State. He spoke of federations elsewhere. Have we any experience within or without the Empire as to the power of the Federal Government, in dealing with its constituent elements, upon which these paragraphs have been based, or are the

circumstances so different that we have to contrive an entirely new Constitution?—Upon the whole, the circumstances are so different that it is very difficult to apply to India a constitution that is applicable to any other part of the Empire. At the same time, in our consideration of the problem, certain general features have emerged: for instance, the difficulty of sanctions if a unit of a Federation refuses to carry out the decision of the Federation; but, speaking generally, Mr. Foot is right in suggesting in his question that the conditions in India are peculiar to India.

12,843. Therefore there is nothing in the history of the Empire that gives us any particular guidance upon this difficult question that has been raised to-day?—There are certain general landmarks that one can take into account. One cannot go farther.

Marquess of Zetland.

12,844. Secretary of State, does it not follow from the distinction which you draw from Federal Legislation in the purely Federal field and Federal Legislation in the concurrent field, that all Federal Legislation in the concurrent field will necessarily be only permissive?—No, it will have the valid strength of any law; it will be the competent law; it will not be permissive.

12,845. But, in actual fact, if you say that you do not propose to give the Federal Authority any right to issue orders to the Provincial Government to carry out the Federal law in the concurrent field, it seems to me that in actual fact it will amount to that that the Federal Legislation in the concurrent field will only be permissive?—No; the Provincial Courts will accept it as the valid law.

12,846. If that is so, I am bound to say I cannot see why any distinction should be drawn between the two categories of Federal Legislation. It seems to me very illogical. I should have thought they must have been on the same footing?—I do not think I have anything to add to what I have said earlier on that point this morning.

Lord Rankeillour.

12,847. Secretary of State, may I go back for a moment to the second part

of No. 125 : "The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject." May not the Provincial Government's executive power and authority be exercised so as to affect the administration of a reserved subject under No. 11 ?—Yes ; then the Viceroy can intervene under his special responsibilities.

12,848. But, short of his intervention under his special responsibilities, there is no provision for checking the administration of the Provincial Government as affecting a reserved subject ?—Yes, it is exactly the same. The Reserved Departments are Federal subjects, but they are Federal subjects within the exclusive competence of the Governor-General.

12,849. They are Federal subjects ?—They are Federal subjects.

12,850. Therefore, the machinery, whatever it is, is the same ?—The machinery is the same.

12,851. How would this work out ? Let us take external affairs. Supposing a Provincial Government had imprisoned some foreign seamen, or foreigners of any kind, not British subjects, and they claimed that it was an illegal arrest and correspondence arose with the foreign Government, would the Governor-General be able to issue directions to the Provincial Government to treat them differently, to release them, or whatever it might be ?—Yes, if it came within the Reserved Department of External Affairs.

12,852. Because it was a Federal subject ?—Because it was a Federal subject.

12,853. Then "Federal" covers "reserved" all the way through ?—Yes, the whole way through the White Paper.

12,854. Is that clear from the text of the sections of the document, or is it intentional ?—It is intentional and I would have said it was as clear as anything could be made. I have stated it several times in this Committee that Reserved subjects are Federal subjects, but they are reserved within the exclusive competence of the Governor-General.

Mr. *Zafrulla Khan*.] If Lord Rankeilour will look on page 113, the exclusively

Federal list, he will find all the Reserved subjects are included in the list.

Lord *Rankeillour*.

12,855. I wanted to get that clear ?—Lord Rankeillour will see it further defined in List I of the Appendix.

12,856. I come to another point. With regard to sanctions, I think you said that over a great part of the Federal field the Federal Government would have its own officers ?—Yes.

12,857. But in another great part it will not have its own officers. Do I gather that in the case of a really recalcitrant Government in a matter where the Federal Government had not got its own officers in a Province you do not see your way to insert any definite sanctions with reference to the carrying out of the legislation of the Federal Government ?—As at present advised, I think it would be much wiser not to insert any definite sanctions. There is nothing to prevent the Federal Government having its agents wherever it likes in the purely Federal field.

12,858. That is to say, like the United States Government in regard to Prohibition ?—Yes, and judging from the experience of the United States the result is not very hopeful.

12,859. You have nothing further than that to suggest ?—No.

12,860. Just one word with regard to the States : Within the provisions of the Federal Constitution there are really no sanctions at all ; within the limits of the Federal Constitution for enforcing the Federal policy in the States, that is to say, the Governor-General would have to go to the Viceroy, and the Federal law could only be enforced by the sanctions of paramountcy in the case of absolute recalcitrance ?—In the last resort that would be so.

Sir *Reginald Craddock*.

12,861. Secretary of State, one aspect of the position which has not yet been touched upon, but which from practical experience I know occurs, is where two Provincial Governments are at variance upon some point. Hitherto a reference to the Government of India under the existing system would always be possible if such disputes were of considerable

importance ; but will that method now be available, of reference to the Federal Government in such cases ?—Sir Reginald Craddock has raised an important point that is not covered explicitly in the White Paper proposals. I think somewhere we must deal with it. There must be some kind of means of settling disputes between Provinces, some kind, say, of arbitral machinery for settling disputes of that kind. The cases that are particularly in mind are the cases connected with water in which more than one Province may be interested, and indeed Indian States as well, and we are at present in consultation with the Government of India and with my advisers upon that point, but I certainly agree that somewhere there must be machinery for settling disputes of that kind, other than, as I am reminded, the machinery covered by No. 155, namely, the Federal Court.

Mr. M. R. Jayaker.

12,862. May I draw your attention to paragraph 161, in regard to the Federal Court : "The Governor-General will be empowered, in his discretion, to refer to the Federal Court, for hearing and consideration, any justiciable matter which he considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it." Do you think it is possible to refer such questions under this Section with a slight modification of the terms of that section ?—I think there are some cases that are scarcely justiciable. If there are cases of that kind, and I think we shall find there are cases of that kind—

12,863. What I am suggesting is that the terms of this Section might be slightly modified so as to include cases which are not strictly justiciable ?—I think that might be so.

Marquess of Salisbury.

12,864. They only deal with justiciable matters ?—Yes. I am not quite sure whether the best way to deal with it would be to alter that paragraph. That paragraph deals explicitly with the Federal Court. I have in mind cases that are not strictly justiciable and for which some kind of arbitral tribunal might be more suitable than the Federal Court.

Mr. Zafrulla Khan.] If I might intervene, Secretary of State, what is a justiciable matter within the meaning of this paragraph ? I have never been able to find a definition of a justiciable matter. I think it would be better if you made it rather general, and did not confine it to what is justiciable.

Marquess of Reading.] It would take a long time to lay it down.

Archbishop of Canterbury.] May I call the attention of the Secretary of State on this very matter to his answer to Question 8678, put by Sir Akbar Hydari : "Would it not be preferable to omit the word 'justiciable' as the matter must be, without this word, of such a nature that it is expedient to obtain the opinion of the Court upon it ?" and the Secretary of State said, "I must certainly consider the suggestion."

Sir Austen Chamberlain.

12,865. The Secretary of State, I understand, considers that there are certain questions which can be determined by rule of law and which are, therefore, eminently proper for a Court of Law, but there may be other issues to which no rule of law applies, or the only rule of law you could apply would produce impossible results, and it is for those cases that you suggested something in the nature of an arbitral or conciliation tribunal ?—Yes.

12,866. A question like the disposal of the water of a river passing through several Provinces where vital injury might be done to a Province lower down the river by action taken in the upper courses of the river ?—Yes ; just that kind of case, a case in which there is a great body of past experience that must be taken into account, but that, not being case-law, might not be taken into account by a purely legal tribunal.

Sir Reginald Craddock.

12,867. If I might put some practical illustrations to the Secretary of State. For example, my old Province, the Central Provinces, were hemmed in by States on the North and on the South and South-West, and there were certain obligations which the Provinces and the States gave mutual effect to. They are

important in one way and though it would be difficult to call them justiciable. For example, it is understood that when the Police of a Province are pursuing a murderer or a dacoit, so long as they are in hot pursuit they may arrest him over the borders of the State, but they must thereupon promptly hand him over to the Police of the State for custody until such times as extradition can be arranged. In a matter like that supposing that they are interfered with by the State Police, or the State Police refuse to take over the custody of such a person, how would a case like that be dealt with? At present the Province concerned would not address the Durbar of the State direct. It would go to the political officer in whose area the State was situate, if they had complaints of that kind to make?—I think what would happen would be that in the first instance there would be consultation between the Ministers concerned, namely, the Ministers of the Provinces and the Ministers of the State involved. If nothing resulted from the consultation and there was a grave menace as a result, then there would be the power of intervention under paragraph 126. I ought to amplify my answer and say that, as far as British India is concerned, there would be the power of intervention under paragraph 126, and in the case of States there would be the power of intervention under the general power of paramountcy.

12,868. I would just like to give one more instance of the arrangements that were made under Excise. That was an understanding that the bordering States and the Province should keep a shopless zone for liquor three miles of the border on either side, the reason being that if liquor were cheap in the native States all the people from the British territory who wanted liquor would flock into that shop, and, with mutual arrangements, it was very seldom that liquor was cheaper in the Province than it was in the State, but the obligation was mutual—a three mile shopless zone. If that is broken by a shop being planted just on the border and the whole of the Excise Revenue from that locality is diverted to the State, in that case again would there be any power of reference if the State did nothing, if it was asked?

—The state of affairs would be very much what it is now, namely, that those questions are settled by negotiation by the political officers, and I presume they would be equally so settled in the future. There is no power of further coercion in these Proposals, nor is there any means of coercing now.

12,869. There may not be on paper, but, if a State is very recalcitrant, the influence of the political agent might be brought to bear upon it, but do I understand the Secretary of State to imply that in future correspondence will be carried on direct between the Provincial Government and the Provincial Ministers and the State Ministers, and that the practice at present in force will continue, whereby Provinces put their grievances, if they have any, against the State through the political agents or the A. G. G.?—I should like to think over the detailed procedure, but my own view would be that if you want to have co-operation you had better start with direct talks between the Ministers concerned.

12,870. Because ordinarily, the local officials have friendly understandings with the officials across the border. It was the ease in my experience with Burma, and even with Siam, which is a foreign power, but nevertheless, easings of friction must arise sometimes, and I was very anxious to know exactly how under the New Constitution those cases would be met. I am much obliged to the Secretary of State?—The Ministers, of course, could always appeal to the Provincial Governor and the Provincial Governor could appeal to the Governor-General in a really serious case to bring his influence to bear upon the recalcitrant State.

12,871. But I think you said that you contemplated some provision for arbitration for such cases?—In the kind of cases I mentioned just now.

*Miss Pickford.*

12,872. I want to ask one question which I think was not completely covered by Mr. Foot's question. Is there not any experience in the Constitutional law and practice of the Dominions of Canada, Australia or South Africa, with regard to international labour conventions which



would aid us in this matter? These conventions are discussed by Delegates of the Federal Government and are ratified by the Federal Government, but, of course, are observed and enforced in the units. Have there not been questions between the units and the Federal Government which would aid us in this matter?—The experience goes to show how very difficult it is to force a unit in a Federal Government to do what it does not intend to do.

12,873. Have these questions arisen over international labour conventions?—Yes.

12,874. And, therefore, the ratification has failed now owing to the refusal of a State to enforce it?—I think that has actually happened in the case of the Dominion of Canada.

12,875. And no satisfactory way out has been found?—No.

Marquess of Reading.

12,876. Do I understand you to say that ratification failed because of that, Secretary of State?—So I understand. (Sir Findlater Stewart.) In ratifying the authorities explained that their ratification did not extend to the Provinces of Canada. The same thing happens in India. When we ratify one of these things, we have to explain that the ratification does not extend to the Indian States. Ratification on behalf of India or Canada, as the case may be, is a qualified one.

Marquess of Salisbury.

12,877. So that henceforth the ratification would not extend to any of the Provinces but only to the Central Government?—That depends upon what you say here.

Marquess of Reading.

12,878. Nowadays, if the Government of India ratifies, as, for example, it did the Eight Hours Convention, that applies throughout all the Provinces?—Throughout all the Provinces.

12,879. But that would not be changed by anything that is to happen now, would it?—(Sir Samuel Hoare.) No. I think that Miss Pickford's point was a rather different point, was it not, as to

what is to happen if a State refuses to carry out a part of the International obligation, and there our experience goes to show that it is very difficult to use coercion.

12,880. The point I was going to make was that it did not affect the ratification which has already taken place; what it does affect is the carrying out of the obligation?—Yes.

Sir Austen Chamberlain.

12,881. Then if it does not affect the ratification it does not affect the rights of the other parties to the Treaty under the Treaty and the ratifying government, which would be the Federal Government, might be taken before the High Court at the Hague and condemned to damages for the failure of the Provincial Government to carry out its obligations?—I do not know whether that is so or not, but the fact remains that that is the actual state of affairs with Canada to-day.

Lord Rankeillour.

12,882. Would the ratification come under the domain of external affairs reserved to the Governor-General?—If Lord Rankeillour will look at List I, he will see the definition of "external affairs"; it is on page 114, item 8.

Mr. Zafrulla Khan.] I think that gets over the difficulty. If it is a matter relating to a Federal subject, then, the Federal Government having ratified, can enforce it of its own accord: if it is a matter which relates to a non-Federal subject, it cannot ratify it unless it obtains the concurrence of the units, in which case it will be binding upon the units also.

Sir Austen Chamberlain.] And if it relates to a subject in the concurrent sphere, would Mr. Zafrulla Khan cover that contingency also?

Mr. Zafrulla Khan.] As a matter of fact the concurrent sphere is a sphere of Provincial subjects, not exclusively, but a certain group of Provincial subjects in respect of which uniformity has been considered desirable, and therefore power has been given to the Federal legislature to legislate also. Therefore, they are

non-Federal subjects. Being non-Federal subjects, the Federal Government will not be able to ratify unless it obtains the concurrence of the units.

*Sir Austen Chamberlain.*] Then it can legislate to make a law, but it cannot negotiate a treaty.

*Mr. Zafrulla Khan.*] It cannot ratify a treaty unless it obtains the concurrence of the units, being non-Federal subjects.

*Sir Austen Chamberlain.*] I do not agree.

*Mr. Zafrulla Khan.*] Clearly Item 8 on page 114 says: "including international obligations, subject to previous concurrence of the units as regards non-Federal subjects", because even with regard to the concurrent subjects, *Sir Austen Chamberlain* will see at page 68, paragraph 114, that "the Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces". And the object of this proviso in Item 8 at page 114 is that before the Federal Government ratified an International Convention that might apply to non-Federal subjects, it should obtain the concurrence of the units for the reason that the carrying out of the convention might involve expense, and if it involves expense then their concurrence must be obtained; otherwise they would not provide the money.

*Sir Austen Chamberlain.*

12,883. Would the Secretary of State consider and let us know the opinion of his advisers as to whether a concurrent subject, if it becomes the subject matter of Federal legislation, is for these purposes a Federal subject, or a concurrent subject, or is governed by the principles applying to Federal subjects after it has become a matter of Federal legislation, or is still governed by the proviso requiring the assent of the units?—I will consider the question in detail. My immediate answer would be that it is a Federal subject if it falls into the sphere of international obligations under Section 8, page 114. That being so, the Federal Government could give directions.

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*Lord Eustace Percy.*

12,884. On that last point, Secretary of State, may I just suggest to you that you are in danger here of being up against quite a different difficulty from the difficulty of Canada and Australia. You may be able in ratifying a treaty to reserve the consent of your units, as Canada does, because it may be a Federal subject, and therefore you may ratify on behalf of the whole of India, but you may be utterly unable to see that administratively the agreement is actually carried out?—I think that is a difficulty.

12,885. I just want to put to you the point that it is different from the other Dominions in this matter?—Yes.

12,886. But the only specific question I want to ask is a new one on Proposal 126. I see that the power of the Governor-General in his discretion to issue instructions is limited to any grave menace to the peace and tranquility of India. What happens to his other special responsibilities?—His other special responsibilities are set out in the earlier clause.

12,887. In clause 18?—Yes.

12,888. Has he no power to issue instructions to the Governor about the safeguarding of legitimate interest of minorities?—Yes, certainly.

12,889. Then the fact that this is confined only to the first of his special responsibilities is not deliberate; it is not intended?—No; it was thought necessary for various more or less technical reasons to have paragraph 126 in addition to paragraph 18. Paragraph 126 is necessary, because there are certain cases that might not be covered under paragraph 18, that is the sole reason; but it in no way detracts from his power to intervene in the whole field of his other special responsibilities.

12,890. May I just add one question: In replying to Lord Rankeillour you said that the Federal Government would have power to appoint its own agents in the Provinces to carry out legislation in the exclusively Federal sphere. But, is it not the fact that there is nothing in the White Paper to prevent it appointing its own agents for carrying out the Federal law in the concurrent field?—I am not

sure whether there is, or whether there is not, but the way paragraph 125 was drafted was meant to imply that there was a difference between the treatment of the two fields.

Lord *Eustace Percy*.] Yes, I quite realise that, but I just wanted to get the point clear.

Mr. *Cocks*.] We are not debarred, I take it, from asking a question on this matter of concurrent subjects which was discussed earlier on?

Chairman.] I must leave it to the discretion of the Honourable Member.

Mr. *Cocks*.

12,891. Suppose we have such a case as has been suggested of the Federal Government passing an 8-hour Act?—Yes.

12,892. One of the Provinces refuses to administer it, and the factories, therefore, in that Province work say ten hours. Is it not, then, possible for the Federal Minister to bring an action in the Courts against the particular factory owner who is breaking the Federal law?—Yes, not only the Government, but any individual could do so.

12,893. Would that action be brought in the Provincial Court?—Yes.

12,894. The Provincial Court would carry out the Federal Act in that case?—Yes.

Mr. *Cocks*.] That is all I wanted to ask.

Lord *Hutchison of Montrose*.] Do I take it we are asking questions now on the whole range up to paragraph 129?

Chairman.] That is so.

Lord *Hutchison of Montrose*.

12,895. Under paragraph 127 I know negotiations have been going on with the Princes. Has the Secretary of State any information to give the Committee as to what particular parts of the Federal legislation would apply to the Princes states?—We have got the lists of the three classes of subjects. It is impossible to give a final or definite answer to Lord *Hutchison's* question until we have got the Treaties of Accession.

12,896. Then, I understand from the Secretary of State's answer that up to

the present no agreements have been entered into with any of the Princes?—You could not enter into any agreements it seems to me with any of the Princes until the Constitution Act is, if not passed, at any rate nearly passed. You could not enter into any agreement with the Princes, for instance until this Committee has reported and the Government has taken its decisions about what are the contents of these various lists.

Earl of *Lytton*.

12,897. May I carry that last question a little further? The Secretary of State says it would be impossible for there to be any agreement between the States on the subject of Federation until it was known what the Constitution Act was going to be. I quite understand that, but I would like to ask him this: whether any evidence is as yet available as to the extent to which the States are prepared to accept the authority of a Federal Government?—Yes; we have had, of course, a great deal of discussion over points of this kind over the last two or three years, and, speaking generally, the lists with the subjects in them have been agreed between ourselves and the representatives of the States. The actual way in which the jurisdiction should be carried out in a particular State, I think, must be the subject of a detailed agreement in the Treaty of Accession, but, speaking generally, these are the lists that have emerged from a very long discussion between ourselves and the representatives who have been in London from the States.

12,898. But could you direct my attention to any particular document which contains evidence of the meaning attributed to the word "Federation" by the States which have accepted the idea of Federation and intimated their willingness to participate in it?—I am not quite sure of the kind of Document Lord *Lytton* has in mind. This is the kind of subject that has been constantly discussed in the last two or three years. He will find detailed reference to it in many of the Committee's reports, and in the proceedings, for instance, of the Council of Princes last March in India. I am not quite sure what further he has in mind.

12,899. What I want to know is this : Whether in the course of the discussions to which the Secretary of State has referred the representatives of the Indian States have expressed their willingness to accept the authority of a Federal Government under the Constitution Act, and whether there is any documentary evidence of the extent to which they are prepared to accept that authority ?—The evidence of the extent is really found in these lists which are the result, as I say, of all these discussions. If Lord Lytton would like further details about the form that the Instruments of Accession would take I would refer him to page 67 in the volume of the proceedings of the last Round Table Conference. He will find there a report of some discussions over which Lord Irwin presided between ourselves and the representatives of the Princes. If, after reading that and the other reports to which I have referred him there is anything else in his mind perhaps he will let me know.

Earl Peel.

12,900. There is one question I want to ask : As regards the enforcement of Federal laws in the States we have been told the situation is different there from that which it is in the Provinces, because there you would have, or you could have anyhow, the Viceroy acting through the political officer, and bringing the usual pressure to bear which he does bring to bear in certain cases in the States. My question is : Is it really wise to mix up in that way the specific duties of the Viceroy as representing the King Emperor and paramountcy, and so on, with the enforcing of Federal laws passed by the Federal Legislature, and so on, in the States ? Surely you want to keep the two things distinct. May I take one instance to illustrate what I mean ? If the Viceroy, as representing the paramount power has, as we know, power to deal very drastically in certain cases with ruling Princes in cases of disorder, or very bad Government, and so on, supposing there is a desire to enforce a certain law which has not been enforced in a certain State, if directions are given by the Viceroy, as representing the paramount power, to his political officer to exert pressure in that particular case, would it not appear to the

Princes and their advisers as if the Viceroy was extending his power of paramountcy and interfering with the internal affairs of the States, and, is it not very unwise, in the long view, to make use, if I may say so, of the Viceroy's power in that respect in order to enforce the decisions of the Federal Cabinet or of the Federal Legislature ?—Quite shortly, my question is, is it not very unwise to do so, and ought not the two authorities in their respective powers to be kept clearly and absolutely distinct as far as you can ?—I think there would be a great deal in Lord Peel's criticism if it was contemplated that this kind of intervention should be of common occurrence. I contemplate it only taking place as the ultimate resort in a very serious emergency, an emergency so serious as to amount in practice to the breakdown of Federation in respect of that State.

12,901. That, I agree, very much modifies my criticism, and I had not quite understood your answers in that respect. That does very much modify my criticism. But take, for instance, under paragraph 128, there are certain officers who I understand will be Federal Officers who will have the power of inspection, and so on ?—Yes.

12,902. They make recommendations and certain orders are made which possibly are not properly carried out ?—Yes.

12,903. That is not a case where you would invoke the great powers which the Viceroy possesses of paramountcy. I understand ? They would only be reserved for extreme and very important occasions ?—Yes. It must depend upon the actual case, but I contemplate only a case of great gravity.

12,904. Therefore ordinarily this sort of case which might be of frequent occurrence, of course, would not pass between the political officers, but would be transacted between the officers of the Federal Government and the State concerned ?—Yes.

12,905. I am much obliged for that answer. There is just one more point about which I wanted to ask. In the case of the directions the Federal Government gives directions, and so on, as to the manner in which the executive power shall be exercised, and, I think you told us that in the case of the

Federal subjects the Federal Government would have its own officers. Is not that so?—I said it would have its own officers for certain services, and it might have its officers for any service it wished.

12,906. But do you contemplate that very largely then, as indeed is suggested in the report of its relations between the Centre and the Provinces in the Third Round Table Conference, that in many cases there will be devolution to the Local Government, and the Local Government will really be through its own officers the agent of the Federal Government in carrying out the Federal objects, and you will not in all cases require a staff of Federal officers?—Yes, certainly, and I hope very much that that will be the normal procedure.

12,907. And, therefore, the general directions given to the Provincial Governments would often be directions as to their relations with the Federal officers, or, in other cases, will be directions as to how their own officers should carry out the Federal orders?—Yes.

12,908. That is so, is it?—Yes.

*Sir Akbar Hydari.*

12,909. Referring to paragraph 123 am I right in assuming that the acceptance of that proposal as at present worded does not involve acceptance of any

method or form in which the limitation by a State of the extent to which it federates in any particular subject will be expressed?—That is so. The methods of application must, it seems to me, be the subject of the Treaty of Accession. I hope, as a matter of fact, there will be as much uniformity as possible, but I can conceive of modifications in the field of uniformity, and those modifications no doubt would come into the Treaties of Accession.

12,910. That is all I wanted to ask you on the subject: that this does not permit or involve any particular form or constitutional position that will be taken up with regard to the extent to which a State has reserved its jurisdiction in particular Federal subjects, and that is to form the subject of discussion when we are discussing the Instrument of Accession?—There will be certain Federal subjects about which the States will have surrendered their rights. The exact methods by which those Federal subjects are administered will no doubt be the subject of negotiation with individual States. What, however, the Federation will have to be sure about is that there is a sufficiency of uniformity in the administration of Federal subjects as to make the administration efficient, and that there will not be such divergence of administration as to destroy the basis of Federation.

*(After a short adjournment.)*

*Sir Manubhai N. Mehta.*

12,911. Secretary of State, this morning while discussing Section 125, you were good enough to express your readiness to qualify the words "every Act of the Federal Legislature" by saying that it may have to be confined to those Acts which are exclusively of the Federal sphere, so as to leave out those Acts which may belong to the sphere of concurrent jurisdiction?—I am not quite sure, Sir Manubhai, if I did say that exactly. I am not quite sure that I understood Mr. Manubhai's point, or whether I did say actually what is suggested.

12,912. What I mean was that this morning you were good enough to express your readiness (not your decision)

to consider the words "as to secure that due effect is given within the Province to every Act of the Federal Legislature," instead of "every Act of the Federal Legislature." You want to restrict it to exclusively Federal Acts so as not to include Acts of concurrent jurisdiction?—That is the actual position now under 125.

12,913. May I ask if you would be prepared to extend the same consideration to Section 127 which deals with States. "It will be the duty of the ruler of a State to secure that due effect given within the territory of the State to every Act of the Federal Legislature which applies to that territory." Would you not consider "every Act of the Federal Legislature" to mean pertain-

ing exclusively to the Federal sphere? As I understood it, you said this morning that as regards the States there would be greater reason to interpret it that way because there would be no concurrent field with regard to the States?—But 127 only does apply to the Federal sphere.

Sir *Manubhai N. Mehta.*] Then it is likely to be misunderstood. My interpretation was at one time, “every Act of the Federal Legislature which applies to that territory.” When the Federal Legislature passes an Act, it will say it applies to the whole of India, and India may include not only British India but Indian States, so there is likely to be some confusion or ambiguity as regards applicability to that territory, so it would be I should say more expedient to limit this to every Act of the Federal Legislature which pertains exclusively to the Federal sphere for two reasons. One is, as you said, that there would be no concurrent field with regard to the States, and, secondly, that the States have internal autonomy which the Provinces at present do not possess.

Mr. *M. R. Jayaker.*] But may I put a question, Sir *Manubhai*?

Sir *Manubhai N. Mehta.*] Please let the Secretary of State answer me.

Mr. *M. R. Jayaker.*] I want to understand that question. Which applies to this territory? Do not these words exclude every Act of the Legislature in the concurrent field?

Sir *Manubhai N. Mehta.*] No, they may not, because, suppose the Federal Government passes an Act as regards negotiable instruments, and says it applies to the whole of India: By interpretation, India may mean territory subject to Indian States. There is a little ambiguity; I want that ambiguity cleared up.

Sir *Hari Singh Gour.*] The Federal Legislature has no right to legislate for the whole of India.

Mr. *Manubhai N. Mehta.*

12,914. I understand that, but where is the objection to removing the ambiguity?—I should be very glad if I could to remove any ambiguity that there is. At the same time, Sir

*Manubhai Mehta* will see that there are these kinds of difficulties which have to be taken into account. The Federal Act must be applied somewhat differently between one State and another. Moreover I think Sir *Manubhai's* fears are really groundless if he will look at Section 111. He will see there that the Federal Legislature is restricted exclusively to Federal subjects

12,915. But there may be laws passed by the Federal Legislature upon subjects of concurrent jurisdiction, the civil and criminal procedure code or the penal code?—I will look into the point, but I would have said that the States were quite safe. Concurrent legislation does not apply to the States.

12,916. It should be made clear, because as I say, to me and to several of the Indian rulers the words “concurrent jurisdiction” have a different meaning. Concurrent jurisdiction will mean that, even as regards railways, or negotiable instruments which are Federal subjects, the States may have slightly different laws applicable to their local conditions, provided there was no fundamental difference between the two. That was how the States understood the words “concurrent jurisdiction”?—I will certainly look into points of that kind. Our intention is to safeguard the States’ rights.

Mr. *N. M. Joshi.*

12,917. May I ask one question? You stated that concurrent legislation will not apply to the States. Will not the States be permitted to enter the Federation even as regards some of the concurrent subjects?—Certainly I would say that the States can surrender such powers as they think fit. There is, however, a minimum surrender without which their entry would not be accepted, and that minimum surrender is in the Federal field.

12,918. But if they at some stage choose to federate, even as regards concurrent subjects, there is nothing to prevent that being done?—No, I do not think there is.

Sir *Manubhai N. Mehta.*

12,919. Then I pass on to Section 128. That provides that “the Governor-General will be empowered” and with

the concurrence of any State "will be required to make agreements with the ruler of any State for the carrying out in that State, through the agency of State authorities, of any Federal purpose." I take it that this does not include the conjoint authority or corporate authority of two or three different States. I will give you an illustration: Two or three small States may for the purposes of securing efficiency arrange between themselves that they may have one common judiciary or common educational subjects or some other common service. Now the carrying out of the Federal instructions instead of being conveyed to the State Authority may be conveyed to the Conjoint State Authorities. I take it that this is not excluded?—Certainly it is not excluded, and I would say that that would be a movement that the Federal Government would be wise to encourage.

12,920. Another question on the same Section: "But it will be a condition of every such agreement that the Governor-General shall be entitled, by inspection or otherwise, to satisfy himself that an adequate standard of administration is maintained." I take it that this is, of course, confined only to the Federal sphere?—Yes.

12,921. Secondly, that in the phrase, "By inspection or otherwise", the word "otherwise" is rather too vague. It might include direct enforcement. The present practice is, for instance, in the Railway Department that there is the railway inspector who goes round the State Railways and inspects them; if there are any defects, he reports those defects to the State Governor. There is no direct enforcement, so "or otherwise", I take it, does not include direct enforcement?—Sir Manubhai will have heard what I said this morning. I think I made the position quite clear that there is no intention in anybody's mind of marching armies into States and enforcing agreements. Really the use of the phrase "or otherwise" I think is meant just as much in the interests of the States as in the interests of the Federal Government, namely, that it might not be necessary to have a direct inspection of Federal arrangements at all, but other arrangements might be made for the

inspection to take place by the agents of the State acting on behalf of the Federal Government.

12,922. Only, as I said, misapprehension may be removed if it is made clear that "or otherwise" does not include enforcement. With regard to these officers of the Federal Government being located in States, I take it that they are there subject to the ordinary laws of the State? If they commit an offence it would be according to the laws of the State that they would be tried; they would not claim any diplomatic immunities?—The question is new to me; I would have said offhand not. I will look into it.

Sir Manubhai N. Mehta.] What I wanted to know was that they would be amenable to all the ordinary laws of the State where they are placed.

Sir Hari Singh Gour.] They would be agents of the Federal Government.

Sir Manubhai N. Mehta.

12,923. For instance, if he commits a crime, he must be liable to the laws of the district. Of course, the fact that Sir Hari Singh Gour has asked this question shows that there is some difference of opinion. The last question is about No. 129: "The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State-Member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled". By "Federal obligations" I understand they imply also a respect for the provisions of treaties which are already entered into and which may be preserved or saved in the Instrument of Accession?—I am not quite sure that I have followed Sir Manubhai's question.

12,924. What I wanted to know was that the Federal obligations of that State are duly fulfilled. Federal obligations of course are in the Federal sphere and subject to the existing treaties and engagements?—Yes. Here again I am not quite clear whether I have given an answer to Sir Manubhai's question or not. Existing treaties of course as modified, if they are modified, in the Instrument of Accession.

12,925. That I understand. This morning, in reply to a question by Lord Peel and also Sir Reginald Craddock, the question of excise obligations or excise relations was discussed, and in reply to Lord Peel you were good enough to say that in such matters paramountcy would not necessarily be appealed to, but it will be preceded by friendly negotiations of Ministers of the Province and Ministers of the State. I wanted to know if in such negotiations or discussions if the State does not carry out its obligations, it is a non-Federal matter. Excise relations are not Federal matters, but are non-Federal matters, and if the State did not carry out its obligations or agreements, you were good enough to say that the matter will ultimately rest with the Viceroy, and the Viceroy, exercising his paramountcy power, will see that it is enforced. I ask the contrary question: Suppose that the Province does not carry out the obligation? In that case it came out this morning that the Governor-General will have no power to enforce it from the Provinces. May I ask if in such contingency the States may not be allowed the liberty to go to a Federal Court of Law?—We have already covered that point in, first of all, Section 70, sub-Section (e). It is that kind of ease that we have in mind, that would be dealt with under subparagraph (e) of 70. In the case of the Governor-General it is 18 (f).

12,926. I only wanted to be clear whether these special responsibilities will apply to provisions of treaties and agreements with regard to such matters as excise arrangements, which are in the non-Federal sphere?—I would have thought that under 18 and 70 we really do cover those dangers, even outside the Federal field. We will look into Sir Manubhai's point and see whether it should be met further.

Sir Manubhai N. Mehta.] Thank you. That is all.

Mr. F. Thombare.

12,927. I have a few questions. Secretary of State, the Instruments of Accession which the States will execute will perhaps be more or less uniform?—Yes.

12,928. But still, they will make certain reservations as regards the Federal

subjects. To the extent of the reservations, will they not trench upon the authority of the Federal Officers who deal with those subjects?—It would mean that the duties of the Federal Officers would be somewhat different in one State as compared with another in cases of that kind.

12,929. So that the reserved sphere would be excluded from the scope of the power of the Federal authority?—All that sphere would be excluded that had not been surrendered in the Instrument of Accession.

12,930. Would it be excluded from the scope of the Federal Ministers?—Certainly.

12,931. Then, as Sir Reginald Craddock pointed out, Provinces and States would have an interest in certain provincial subjects, for example, excise?—Yes.

12,932. And there may be agreements on such a subject between a Province and a State. In this respect again, these agreements will trench upon the power of the Ministers?—They might do one of two things; they might tie the hands of the Ministers or they might tie the hands of the State.

12,933. Both?—Yes.

12,934. Just as they will tie the hands of the States, they will also tie the hands of the Ministers?—Yes, they will be in the nature of an agreement between the two parties.

12,935. Then the reservations thus effected by the agreements in favour of a State would be excluded from the scope of the power of the Federal Ministers?—Yes. That is very much the same question in another form that I answered just now.

12,936. Then in so far as a provincial subject may be the subject matter of an agreement between a Province and a State, the agreement would really be between the paramount power and the State, and, to that extent, it would perhaps not be a provincial matter at all?—I do not follow that line of reasoning. The agreement would be between the provincial Government and the State. There would only be an intervention in the field of paramountcy in the sort of conditions that I described this morning,



namely, a very serious emergency striking at the roots of the State's Federation generally.

12,937. What I have in view is merely this, that the reservations that may be effected by such an agreement between a Province and a State would exclude that subject to that extent from the authority of the Ministers, and therefore the reserved subject would be a matter for the jurisdiction of the Viceroy as representative of the paramount power?—I think it might be that. It might, on the other hand, be an agreement that tied the hands of the Ministers of the States.

12,938. But just as it tied the hands of the Ministers of the States, so would it also exclude the jurisdiction of the Provincial Ministers?—It might of course do that. It might, on the other hand (I have not got any concrete case in mind) I suppose, extend the activities of a Government if it was agreed to do so in the negotiation.

12,939. What I have in mind is a kind of disagreement arising between a State and a Province. In that case, would not the dispute be entirely for the Viceroy to decide?—It is very difficult for me to answer a general question of that kind without having clearly in my mind the kind of case that is contemplated. Could Mr. Thombare give me a concrete case as an illustration?

Mr. Y. Thombare.] Supposing there was an agreement about excise arrangements between a Province and a State and there may be a term as regards the number of shops that are to be authorised for the sale of liquor: there may be a disagreement between the Province and the State as regards the number of shops to be maintained in a particular zone; who would be the competent authority to decide such a dispute? Though constitutionally speaking the question may be one for the Governor, it has to be remembered, as you, Secretary of State, pointed out, that the Governor and the Ministry would be normally working in close relations with each other, in friendly relations with each other, and it would involve a heavy strain on the Governor to maintain an attitude of detachment.

Mr. N. M. Joshi.

12,940. Will the Secretary of State state how the disagreement is to be resolved?—The disagreement would have to be resolved by negotiation in the first place, and if negotiation did not succeed, either the agreement would collapse or, in the event of the disagreement leading to a grave emergency, then the Viceroy would have to deal with it in the field of paramountcy.

Mr. Y. Thombare.] But it is conceivable that there may be no plain emergency, yet there may be disagreement with regard to certain points. Now who would solve that kind of disagreement?

Sir Austen Chamberlain.] Is Mr. Thombare dealing with a question where no agreement is reached about such a question of excise as he has spoken of, for example, between a Province and a bordering State, or is he dealing with a question where an agreement has been reached and one of the parties alleges that the other party is breaking it.

Mr. Y. Thombare.

12,941. It is the latter, Sir?—I think then it must depend a great deal upon the gravity of the case. I can conceive a case that was of no very great importance in which the result of a disagreement of that kind would be to bring to an end the agreement between the Province and the State. I can also imagine a case in which the issue might be justifiable and it might go to the Federal Court. I can also contemplate a type of case in which it might be agreed by both parties and by the Viceroy to have an *ad hoc* tribunal to inquire into it. I can contemplate a number of ways of dealing with a case of that kind. It must really depend upon its gravity.

12,942. And the ends of Justice?—Yes.

Lord Rankeillour.

12,943. If the quarrel was between a Province and a State, could not the Province have instructions under the second part of 125, from the Federal Government as to its policy towards the bordering State?—I am not sure whether that would be Mr. Thombare's point.

A good deal of Mr. Thombare's argument was directed to cases which were not strictly in the Federal field.

12,944. A quarrel about arrangements for the collection of excise duties surely would be in the Federal field?—No; in the provincial field.

12,945. I know?—I do not think the second paragraph of 125 would meet what is in Mr. Thombare's mind.

Sir Austen Chamberlain.] The example which Mr. Thombare gave is an agreement providing for instance that within three miles of the Frontier on either side there shall be no licensed premises, and it is alleged either by the Province that the State has broken the agreement, or by the State that the Province has broken the agreement. Is not the answer of the Secretary of State the right one: that is a matter for negotiation? It may lead to the cessation of the agreement, the collapse of the agreement, unless the agreement has specifically provided some tribunal to which such a dispute should be referred.

Archbishop of Canterbury.] Or unless by mutual agreement reference is made to such a Court. It need not be in the original agreement, the agreement between the parties.

Sir Austen Chamberlain.] Yes.

Mr. Y. Thombare. .

12,946. What would be the position of the Ministers, whether in the Province or the Federal Government, with regard to the paramountcy staff of the Viceroy?—They would have nothing to do with it.

Mr. Y. Thombare.] Then Proposal 123 raises the question of the States' Instruments of Accession. Would it be in order to raise the question of the Instruments of Accession now under paragraph 123?

Chairman.] If it relates to these paragraphs, it would probably be convenient to take it now.

Mr. Y. Thombare.] Yes. The States evidently want to carry out as many Federal purposes as possible in their territories.

Archbishop of Canterbury.] What is the paragraph, Mr. Thombare?

Mr. Y. Thombare.

12,947. Paragraph 128; the States will evidently want to carry out as many Federal purposes as possible in their territories through their agency, and they will therefore desire to make provisions to that effect in their Instruments of Accession. In such cases, the Government will no doubt satisfy themselves in the first instance that the agency of the State will be competent for the purpose for which it is offered, but I hope the Government in that case will not make any discrimination between one class of State and another and that the only point that will matter will be whether the personnel that the States offer can be trusted to carry out the duties required of them?—An arrangement of that kind must be exclusively upon the merits of the particular case. Obviously, it would be necessary to take into account the efficiency of a particular State for carrying on particular duties. Obviously, also, one would have to judge to a certain extent from past experience and past history.

12,948. Because not all the States are in the same state of development, and their administration varies. There are States which have reached a high degree of efficiency, and their administration has been spoken of highly by competent authorities. They may not have a high salute, but their administration would bear comparison with the administration of some of the most advanced provinces; so would the question of the agency offered by them be considered on its own merits?—I think all these cases have got to be considered on their own merits. What may be applicable to one case would not be applicable to another. For instance, one service differs from another. Although the administration of a small State might be extremely efficient, none the less it might strike at the very roots of the Federation if every small State had its own administration of a big service. One has got to take all those facts into account.

12,949. It would merely be the efficiency of the service that would matter in such a case, would it not?—It would be the efficiency of the service and the general effect upon the administration of that particular

Federal service, that is to say, the efficiency from the point of view of the State and also the efficiency from the point of view of the Federal Government.

12,950. And that would be governed by the consideration of merits?—Certainly.

12,951. In any case, an ambitious circumstance like a salute would not stand in the way?—I do not think salutes would come into this kind of question at all.

*Mr. Zafrulla Khan.*

12,952. Secretary of State, in order to understand some of the matters which appear to be causing difficulty with regard to this part of the subject, I am afraid I shall have to ask you or your advisers some questions which might tend to clear up, in the first place, the genesis of these three lists, Federal, Provincial and concurrent. If you will kindly help the Committee with regard to the present position, perhaps it would be easier to follow the proposals of the White Paper which have arisen from it. May I draw your attention to Schedule I of the Devolution Rules of the Government of India Act?—Yes.

12,953. This Schedule has two parts. The first part contains a list of Central subjects?—Yes.

12,954. And the second contains a list of Provincial subjects?—Yes.

12,955. Item 46 of this first part of the Central subjects list says: "All matters expressly excepted by the provisions of Part II of this Schedule from inclusion among Provincial subjects," that is to say, all such matters expressly excepted shall be Central subjects?—Yes.

12,956. I will take one item of the Provincial subjects to illustrate what I mean, if you will kindly turn to Item 5 in the Provincial List—Education?—Yes.

12,957. It says: "Education, provided that (a) the following subjects shall be excluded," and then it describes certain subjects. Stopping here for the moment, the effect of this entry is that education is a Provincial subject, but those portions of education which are specified in

Sub-item A are not Provincial because they are expressly excepted?—Yes.

12,958. Then (b) goes on to say: "The following subjects shall be subject to legislation by the Indian Legislature, namely"—then a list follows which has been subsequently modified?—Yes.

12,959. This I understand means that the whole of the rest of the subject of education is Provincial, but again certain parts, even out of this residuum, although the subject is Provincial, are subject to legislation by the Indian Legislature—the Central Legislature?—Yes.

12,960. So that I understand that this list in Part II starts with this. It describes Provincial subjects in this way: Either a subject is wholly Provincial or a subject is Provincial to a certain extent and the remainder of it is not Provincial, but even out of Provincial subjects certain portions of Provincial subjects are subject to legislation by the Indian Legislature?—Yes.

12,961. That is the present existing position?—Yes.

12,962. Do you recollect, Secretary of State, that during the first Round Table Conference a sub-committee under the Chairmanship of Lord Zetland was appointed to consider these lists, and their report is at page 28 and subsequent pages of the Reports of the First Round Table Conference?—Yes.

12,963. They have divided the Schedule appended to their Report into various sub-heads. The first is A "Central subjects which are proposed to be wholly or partly federalized." That is at page 28. Then B on page 32: "Central subjects, no portion of which is proposed to be federalized." Then at page 33, C: "Provincial subjects subject to legislation by the Indian Legislature." I take it that that is the portion of the second list under the Devolution Rules which is subject to Indian legislation, but the subjects are nevertheless provincial?—Yes, that is so.

12,964. Then D: "Provincial subjects specially excepted and those in respect of which extra-provincial control is exercised." That is at page 36?—Yes.

12,965. Am I right in understanding that the concurrent list which has eventually emerged as part of the White

Paper proposals is a list which has been framed out of these classes of subjects C and D, Provincial subjects, in which it is desirable that the Federal Legislature should also have a power to legislate?—Yes, substantially that is so.

12,966. Subject to modifications. I have noticed some modifications myself?—Yes.

12,967. But substantially it has emerged from those two lists?—Yes.

12,968. And that is touched upon in the Third Round Table Conference Report at page 18, paragraph 5, about the middle of the paragraph?—Yes.

12,968A. "The Committee therefore consider that practical requirements will in any event necessitate a field in which both Centre and Provinces should have legislative jurisdiction?—Yes.

12,969. "The Committee consider that the problem could be dealt with with sufficient precision by constituting a common field to which would be assigned matters upon which uniformity of law is or may be desirable and by assigning to both Centre and Provinces the power, but not the exclusive power, to legislate upon any subject included in it; but some method must at the same time be devised whereby administrative powers and functions which properly belong to the Provinces in respect of these subjects are secured exclusively to them?"—Yes.

12,970. I suggest that this last portion, that by making this field concurrent we should not lose sight of the administrative powers and functions which with regard to these subjects properly belong to the Provinces, was put in because these subjects to start with, even under the present system, are Provincial and this concurrent power of legislation at the Centre is given because they are eminently matters in which, if possible and subject to local requirements, uniformity is desirable?—That is generally the case.

12,971. That being so, may I now draw your attention actually to the concurrent list in the White Paper Proposals, page 119?—Yes.

12,972. The first 10 items in this list deal almost exclusively with law in the sense that it is legal enactments and

statutes with regard to which the power of concurrent legislation would be exercised?—Yes.

Mr. *Zafrulla Khan*.] For instance, No. 1 is dealing with the jurisdiction powers and authority of Courts.

Sir *Hari Singh Gour*.] No. 11 would also come under law.

Mr. *Zafrulla Khan*.

12,973. Yes, but other considerations may arise. A good many others may come in, but the first 10 are exclusively law. No. 2 is: "Civil Procedure, including the Law of Limitation and all matters now covered by the Indian Code of Civil Procedure." Supposing there was legislation on it by the Federal Legislature subject to the provisions of paragraph 114 of the White Paper, surely there would be no question of the enforcement of such a piece of legislation by the Federal Government. Supposing the Law of Limitation applying to a certain class of suits were extended beyond the period now in operation, surely it would be an ordinary routine matter between litigants coming up before the courts. One would allege possibly that one period of limitation applies; the other would allege that the other applies; and it would be for the court to decide which particular enactment applied to the suit?—Yes, that is so.

12,974. So that I take it with regard to such matters no difficulty arises with regard to the enforcement of concurrent legislation?—No, I think I generally agree.

12,975. The only difficulty would be that the courts would, in many cases, have to decide out of two conflicting pieces of legislation, say, Provincial and Federal, regulating the same subject which under the provisions of the Constitution Act had priority?—I suppose that would be so, yes.

12,976. Under paragraph 114?—Yes.

12,977. And the moment that has been determined they simply proceed to determine the suit pending before them accordingly?—Yes.

12,978. I submit that the same would be true of the law of evidence which is the next title, and to oaths. Supposing a Federal Statute said certain kinds of

evidence are not admissible in certain proceedings, when such proceedings are pending before a Court of Law it will take cognisance of that and refuse to look at that evidence or *vice-versa*?—Yes.

12,979. You do not require special machinery to enforce an amendment of the Evidence Act by the Federal Legislature. The same applies to "Marriage and Divorce," and to "Age of majority and custody and guardianship of infants." I need not go on to enumerate all these subjects. As I have said, they are purely legal subjects. Then I draw your attention to Item 11: "Control of newspapers, books and printing presses." It may be that the Federal Legislature may consider that some uniform regulation of printing presses is necessary, say, having regard to a widespread campaign of sedition. It may mean requiring the Press to give security or the enforcement of penal provisions. So far as the question was merely one of enforcing that legislation in Courts of Law, so far as it merely created offences, the same considerations would apply here also?—Yes.

12,980. So far as it related to purely executive action, that if, in the opinion of the Government, a certain press or a certain newspaper has transgressed certain limits, the Government might proceed either to forfeit the press or to stop the issue of the newspaper and so on; that no doubt would be executive action, but Law and Order being a Provincial subject, it will be the local government which will have to take action?—Yes.

12,981. If the uniform law said that in order to prevent sedition a certain action might be taken the proceeding is analogous to that which is at present prescribed by the Criminal Procedure Code with regard to offensive publications and so on, and the local government could take action in exactly the same way as it does under the present provisions of the Government of India Act?—Yes.

12,982. With regard to "lunacy, but not including lunatic asylums," all that I can conceive is, either that the definition of lunacy or the procedure laid down with regard to Commissions of Lunacy, is meant. That again is a pure

matter of law and application is made to a district Judge under the present Act to appoint a Commission of Lunacy and he will have to find out what law he has to apply and what definitions he has to apply?—Yes.

12,983. And if the Federal Legislation has laid down the definitions of lunacy and the procedure and so on, and that has been laid down under the provisions of paragraph 114 the District Judge will proceed to apply that law. I do not see why any special machinery should be necessary to apply the definition of lunacy laid down, say, in a Federal Statute. Then: "Regulation of the working of Mines, but not including mineral development." In the regulation of the working of Mines the legislation may provide for two kinds of things. I can conceive that Federal Legislation may prescribe certain action to be taken by the owners of different mines for the safety of workmen working in those mines—positive action, requiring that they shall do certain things in order to ensure their safety, and, as a necessary consequence, it will, of course, have to provide that in the case of default on the part of these owners with regard to these matters there shall be certain penalties imposed upon them. The first kind, of course, might require machinery for inspection?—Yes.

Mr. Zafrulla Khan.] And the enforcement of the second part in the case of failure would be by the ordinary means of prosecution. I apprehend that the second part would cause no difficulty whatsoever; it is the same as enforcing any other of the provisions of the Penal Code. The Provincial Magistracy every day enforces the provisions of the Penal Code and they will also enforce the provisions of any penal legislation passed by the Federal Legislature.

Mr. N. M. Joshi.] May I intervene for a second, because the same question has arisen as regards the factories. It is not that every citizen will be able to prosecute for a breach of the Mining Regulations or Factories Act. Both these pieces of legislation authorise the Factory Inspector or the Mine Inspector to prosecute, and nobody else. Therefore, legislation of this kind will require some organisation to see that the legislation is given effect to.

Mr. *Zafrulla Khan*.] If Mr. Joshi will forgive me, it is just that point I was coming to. I have already said there would be two parts. Once the prosecution is launched the case would be just the same as any other criminal case. The question would be with regard to the Inspectorate. I have said that already. You would require Inspectors to see, in the first instance, that the precautions prescribed by the Federal State were given effect to, and carried into practice, and that if those precautions were not put in force then, that there was consequent action taken whether by prosecution or imposing penalties, or of something like that. Here the question arises that, in the first place, the province itself may have legislated upon the subject. If it has done so no further question would arise. If it has not done so then there are again two questions. If the Province already has an Inspectorate for similar purposes I really do not see where the difficulty would be if the Federal Statute provided as a uniform matter for the whole of India that in addition to the duties which these Inspectors are already performing they shall see that certain other parts, or certain parts of this Federal Statute are also carried into effect. That could be arranged for, as a matter of agency, if there was no other provision for it, the Local Government carrying out as agent the functions on behalf of the Federal Government. On the other hand, it may be a matter which the Federal Legislature, or the Federal Government might consider would involve the expenditure of money on behalf of somebody or the other in order to get it carried into effect. With regard to that may I draw your attention to paragraph 114 of the White Paper. The principle accepted, at any rate in the Round Table Conference—I am not trying to bind the hands of the Committee in any way—was that with regard to concurrent legislation the Federal Legislature should not undertake legislation which would involve the Provinces in a financial obligation.

Sir *Hari Singh Gour*.] Chaudri Sahib, it is a little before what you have said that the difficulty comes in. The Provincial Government have got their own Act, we will say, and the Federal Legislature have passed another Act, and

both require particular machinery for the inspection of mines and other things. The Provincial Government say "We are going to abide by our own Act", and the Federal Legislature desire that they should abide by the Act and carry out the purpose of the Federal Act. Now what sanction is there behind the Federal Legislature to enforce their view upon the Provincial Government in preference to the provision of their local Act?

Mr. *Zafrulla Khan*.] I am aware of that. I am dealing with cases in which the difficulty would not arise, and then I am coming to the provisions which may require consideration from that point of view. Let us consider the competence of the Federal Legislature to pass a certain kind of legislation. If the Federal Legislature proposed to pass legislation which would involve a Province in a financial obligation my position is that, so far as the White Paper at present stands, it will not have the competence to do so.

Sir *Hari Singh Gour*.] That has been admitted.

Sir *Austen Chamberlain*.] Mr. *Zafrulla Khan*, may I get that point clear? As I understand that is a provision which means exactly what it says, that the Federal Legislature in this sphere is not to impose a charge upon the Provincial revenue; but that is no limitation on the power to legislate?

Mr. *Zafrulla Khan*.] No.

Sir *Austen Chamberlain*.] Provided that the Federal Legislature itself provides for any expense which its legislative causes.

Mr. *Zafrulla Khan*.] Exactly. I am coming to that. The result would be as Sir *Austen* has very pertinently pointed out, that the Federal Legislature can pass an Act saying certain things shall be done, and certain regulations shall be enforced and saying there shall be an Inspectorate to see that those are done, and, if they are not done, to prosecute, but, in that case, it must provide the Inspectorate itself, because it cannot lay a financial obligation on the Province as a result of its own legislation. There is nothing to prevent the Central Federal Legislature from doing so, but I will take the other point made by you presently.

Lord Eustace Percy.

12,984. May I intervene, because I misled the Committee by an observation I put to the Secretary of State this morning. Is it not the fact that under List II the administration of all concurrent Acts is exclusively Provincial?—Yes.

12,985. In which case the Federal Government would not have power to appoint its own Inspectorate. How does Mr. Zafrulla Khan deal with that?—The provision is there whatever provision may cover it.

Mr. Zafrulla Khan.

12,986. With regard to the administration of the subject, so far as it was regulated by legislation, either concurrent or Provincial, where the Province was not required to spend any extra money there should be no interference with the administration by the Province, the whole object being that it is uniformity in legislation that is desired; but supposing a situation arose where it is found that on a strict interpretation of these rules and schedules the Federal Legislature has power to legislate, but such legislation involves a financial obligation, such financial obligation shall not be imposed on the Provinces, but then they can have their own machinery to administer what is purely Federal legislation laid down?—No, I do not think that is the case. In a case of that kind what would happen would be that the Federal Government would not have its own agents, but it would pay the Provincial Government to carry out its service.

12,987. I have said that; one or the other. They can either carry it out through provincial agency and let the Provincial Government act as their agents, in which case there is provision saying that if it does not involve extra expenditure there shall be no contribution made, and if there is extra expenditure a contribution shall be made by the Federation or (I may be venturing an opinion) it may be that they have the power to legislate and provide their own machinery?—We have not got that alternative provision in the White Paper now, and I could make some objections to it, I think.

Mr. Zafrulla Khan.] It may be that wants to be considered, but, taking up

Sir Hari Singh Gour's point, that point really does not arise, for this reason: Supposing there is a Provincial Statute saying the maximum working week, let us say, shall be 56 hours, and a Federal Statute subsequently lays down for the whole of India that the maximum working week shall be, let us say, 48 hours, and imposing penalties upon employers who employed people for a longer period than 48 hours during the week, so far as that is concerned it is merely a question for the Courts to resolve this conflict of legislation.

Marquess of Reading.] But who has the right to bring it to the Court? Supposing the obligation is upon the Provincial Government to do certain things in consequence of concurrent legislation by the Federal Legislature, and assume that the province is not disposed to put in force this Act, and therefore it refuses to take the steps to bring the person to book who has contravened the Act, what is to be the action taken then?

Mr. Zafrulla Khan.] Lord Reading, if that were the only difficulty the power of prosecution would be left to anybody affected.

Marquess of Reading.] A private individual?

Mr. Zafrulla Khan.]. Yes.

Marquess of Reading.] That is not the same thing.

Sir Austen Chamberlain.] Are we to understand that the remedy of the Federal Government for a breach of the law is to be an action by a common informer?

Mr. Zafrulla Khan.] No not by a common informer; I said by the person injuriously affected.

Earl Peel.] By an employee of the factory?

Marquess of Reading.] But the obligation is on the Provincial Government. It has to carry out the obligations under the Federal Legislation. Supposing it refuses to do it—it "abstains" to use the word Lord Salisbury employed this morning—what then is to happen? As far as I understand from you it is left to the individual. That is surely not a satisfactory state of things in enforcing the law.

Earl Peel.] Would the Federal Minister bring an action against the employer ?

Mr. Zafrulla Khan.] Of course he would. There are two replies to Lord Reading's last question. I am not assuming, as he is assuming, that any factory legislation by the Federal Legislature will necessarily say that only the Local Government would be competent to prosecute. It is only if the Act says that, that that difficulty arises. Secondly, there is nothing to prevent a Federal Statute which imposes penalties from providing for bringing these offences to the notice of the Court, on complaint by any particular officer—any Federal officer whose attendance in the Court may not be necessary. The present procedure Code provides for several kinds of complaint where it is not desirable that any person should set the machinery of the Code in action. The officers write the complaint out to the Court, and it is not necessary for them to attend, and the prosecution proceeds.

Sir Hari Singh Gour.] But to that extent it will encroach upon provincial autonomy. That will be usurping the jurisdiction of the Province to control its own affairs.

Mr. Zafrulla Khan.] I am not at present on the discussion of the question as to what subjects should or should not be in the concurrent list. If the Constitution provides that to a certain extent these subjects which, with regard to the remainder of them, are provincial, shall to some extent, or to a certain extent be subject to legislation by the Centre that, in itself, is an encroachment upon Provincial autonomy which the Constitution Act considers it is necessary to make.

Lord Eustace Percy.] I wonder if Mr. Zafrulla Khan would address himself to a somewhat different case. Supposing a power of exemption, as is usual, is given in a general fashion in the Act allowing overtime at the discretion of some exempting officer, and supposing that is administered by the Provincial official in such a way as to nullify the law (there have been many instances of that in the past not in India but elsewhere). what remedy has the Federal Government then got ?

Mr. Zafrulla Khan.] What kind of provision ? Provisions which an Inspector would have to see were fulfilled, and he neglected to see that they were fulfilled ?

Lord Eustace Percy.] No ; giving the factory owner the power to apply to an official for permission to work overtime in special circumstances, and the official so administers the law that he grants every application made to him, and therefore in fact nullifies the law.

Mr. Zafrulla Khan.] So far as that is concerned that might happen in a provincial subject too. I do not think any constitution could provide by provisions in the Constitution Act, or by rules made thereunder, that any officer upon whom any duty might be laid will discharge it exactly as the framers of the Constitution think he ought to discharge it. That, I am afraid, has got to be left to the defects of human nature.

Sir Austen Chamberlain.

12,988. May I put a question with your leave, Mr. Zafrulla Khan, to the Secretary of State ? If I rightly understood what Mr. Zafrulla Khan said and what you answered, the administration of a law passed by the Federal Legislature in the concurrent sphere will be in the hands of the Provincial Government ?—Yes.

12,989. If the Provincial Government failed to enforce that law, would it be open to any Federal Official to bring the matter before the Court, or would such action as that contravene the provision which leaves the administration of the law to the Provincial Authority ?—Off-hand, I should say, it would depend upon the clauses of the particular Act.

12,990. But if the provision is general, that the administration of the law belongs to the Province alone, what provision in a Federal Act could nullify that constitutional provision ?—I am not a lawyer at all, but I seem to remember in Bills and Acts of Parliament there usually is a clause saying how procedure can be started and how a case of contravention of that particular Act can be brought into Court. I should have thought that recourse would have to be made to the same kind of procedure in the Federal Act.



12,991. Would it be possible to include in the Federal Act a right of the Federal Officer to interfere in administration if the Provincial Officer or Government failed to discharge its duty, or would it be precluded by the terms of the constitution as contemplated in the White Paper?—I think offhand I would say it would be precluded under our present proposal.

12,992. Then we come back to the point put earlier by Lord Reading and by myself, that if the Provincial administration for any reason deliberately refrains or refrains from administering a Federal Act in the concurrent sphere in a particular province, that Act becomes null and void in that Province, and there is no remedy?—Well, we have just been talking about one remedy, that an aggrieved person can bring an action. That is certainly a remedy of a kind. Sir Austen may not think it is an adequate remedy, but it certainly is a remedy.

Dr. B. R. Ambedkar.] Might I give another example which comes to my mind? Supposing for instance in a state of emergency the Central Government passes a Press Act under which provision is made that no paper may be started unless it deposits a certain amount of security. Now that sort of legislation is not going to affect any particular private individual. Supposing there is a paper in a particular province which is helping the Government of the day—a Party paper: Supposing that paper is influencing the Press Act passed by the Central Legislature, and supposing on account of that affiliation between the particular newspaper journal and the Government of the Province, the Government refuses to take any action against that particular paper, what is the position? Surely no individual is affected in this particular case?

Sir Hari Singh Gour.] There would be the penal clause that he who runs an unauthorised paper will be punished.

Dr. B. R. Ambedkar.] That is exactly the point.

Sir Austen Chamberlain.] Somebody has to put the law in motion.

Marquess of Reading.] And has to have the information and all the machinery for reaching the Government.

Dr. B. R. Ambedkar.] If he charges a particular officer to carry on the prosecution and the local government pays the expenses of that prosecution and does not make provision for it in the budget, what is to happen?—I see all those difficulties. At the same time I cannot help seeing the difficulties on the other side. The case mentioned by Dr. Ambedkar is essentially a case of law and order, and law and order is a provincial subject and interest. The interest of the Federation is the interest of uniformity, but that does not affect the fact that primarily that case is a provincial case. If the argument suggested in Dr. Ambedkar's question, and in Sir Austen Chamberlain's question, too, if I may say so, is pressed to its logical conclusion, it really does mean that the Federation will control the law and order in the Provinces, and that is directly contrary to the principles as at present drafted in the White Paper.

Dr. B. R. Ambedkar.] I beg your pardon. My point is this, if I may submit it: either you must make law and order a purely provincial matter, a provincial concern which the centre has nothing to do with, and then, of course, you can have the argument which you urged just now, but if you make it a matter of concurrent legislation, then I think the Federation must be in the position to see that the law is corrected.

Mr. Zafrulla Khan.

12,993. May I put this, Secretary of State? Of course, we are taking cases of provincial Governments which might do all sorts of things. What provision is there that the ordinary provisions of the criminal law will always be enforced by a Government against people against whom it may not wish to put them into force. We must trust to the ordinary machinery and ordinary procedure carrying on in ordinary times?—There is, of course, no such guarantee except in the case of a grave emergency, when the Governor-General and the Governor intervene under their special powers, and, short of that kind of case, I cannot myself see what guarantee there can be. If members of the Committee can suggest a practicable guarantee, so much the better, but all the suggestions so far

have gone to show me that the guarantee would not be effective, and all that you would do would be to bring the Federal Government into the field of provincial law and order with the almost certain result that you would make the state of affairs much worse than it was at the beginning.

*Sir Austen Chamberlain.*

12,994. Secretary of State, I apologise for intervening again, but have you really understood my suggestion? In the case of a matter reserved to the Federal sphere, you give certain powers to see that the Acts of the Federal Parliament are enforced by the Provinces, to the Federal Government. You do that in matters which are reserved for Federal legislation. Why will not the same steps be applicable and sufficient in the case of legislation in the concurrent sphere where Federal legislation overrides the Provincial legislation?—Sir Austen is, if I may say so, again asking me a question that he asked me this morning.

12,995. I am?—I cannot give any answer other than the answer that I gave this morning, I feel, as at present advised (obviously, one will take into account Sir Austen's suggestions), that the carrying out of the intention that seems to be in his mind will be to undermine the Provincial administration for law and order, and I would particularly ask him once again to think of the difficulties that would arise under those heads. I think they are Nos. 9 and 10 of the concurrent list.

*Earl Peel.*

12,996. Secretary of State, not so much on a question of law and order as on the question that has been dismissed of the enforcement of some factory Act where it might be to the advantage of every Province not to enforce it, would it be impossible to instruct a Federal Minister to instruct a Federal Officer in that Province to bring an action against the employer? That would come before the Federal Court; there would be no question of law and order there. It would simply be a decision of the case as to whether or not that employer had been acting in accordance with the law. Presumably, he would be condemned for

not carrying out the law?—That would be just the case I mentioned just now that would have to be dealt with in the specific Federal Act. In the Act the procedure would be set out under which an action might start for an infringement of the Federal legislation, but Lord Peel will I think see that as long as there is a concurrent list, and try as I will, it is almost impossible to get away from the concurrent list—it is very difficult to distinguish one of the items from another. Sir Austen's question covers everything in the concurrent list. I was making my caveat in connection with what is much the most difficult item in the concurrent list, namely, law and order.

12,997. I do not know whether it is possible to distinguish. Really my question was addressed to the point: it is not much good saying an employee has a right to bring an action against an employer, because these people have no money to do it, and therefore there is no enforcement of the law unless you get some official with the duty of bringing an action if he is so instructed?—I will certainly think over the suggestion. I am not, as I say, a lawyer, and I would not like to make a suggestion offhand.

*Archbishop of Canterbury.*

12,998. Does that not come back to the possibility in a matter of this kind of whether the Federal Legislature is at issue with the Provincial Legislature on a matter of concurrent jurisdiction? Does not that all come within the possible reconsideration and extension of paragraph 161, the power of the Governor-General to bring matters or instruct some officer to bring matters before the Federal Court?—I would not like to give an answer offhand to a rather technical question of that kind. I think it may be so. Here, now, His Grace will see at once that 161 deals only with reference to the Federal Court. I think he will see that that would not cover political questions in dispute.

[Sir Hari Singh Gour.] It will not be justiciable, either.

*Archbishop of Canterbury.*

12,999. I am presuming, of course, that regard will be had to the possibility

of extending that word "justiciable" there, which has been suggested more than once; or, if necessary, the Governor-General should instruct the Governor of the Province to bring the matter before the High Court of the Province?—Off-hand I would say that there was great risk in taking a political controversy, a controversy very likely of a vague kind, into a Court of any kind.

*Sir Austen Chamberlain.*] Your Grace, in many of the questions which we are contemplating, the question will not be as to what is a law; the law is perfectly plain. The question is whether the law is to be enforced, and who has the right to enforce it.

*Archbishop of Canterbury.*] Yes, but this question arose on who was to initiate proceedings in Court.

*Sir Austen Chamberlain.*] It is not for a declaration of the law, but for a prosecution.

*Lord Rankeillour.*

13,000. Secretary of State, for example, under No. 10, supposing the Federal Legislature passed an Act that a certain class of prisoner should or should not be admitted to bail and that act was violated by a District Magistrate granting bail, what could the Federal Authority do in such a case?—I do not think it could do anything, but I am not sure that it would be wise that it should be able to do anything.

*Sir Hari Singh Gour.*

13,001. The prisoner has distinctly the right to appeal to the High Court. In the case of Lord Rankeillour, he talked of the release of the prisoner on bail. If he is not released on bail, he goes to the High Court and appeals under the Federal Act, and the High Court will oppose the Federal Act in opposition to the Local Act and he will get his release?—That is so.

*Lord Rankeillour.*] But who would take it to the Higher Court?

*Sir Hari Singh Gour.*] The prosecutor or the person who has been improperly released on bail, or the person who is improperly detained in jail under the Federal Act.

*Earl Peel.*

13,002. The case of the man who is declared to be by the Federal law bailable and supposing he is not and he is not given bail by the Judge in the Provincial Court, surely in that case he has a right of appeal to the Federal Court and he will be, I presume, *habeas corpus*?—Yes, an appeal to the High Court. My answer to Lord Rankeillour was with reference to the Federal Government; it was not with reference to the aggrieved person.

*Lord Rankeillour.*

13,003. The Federal Act says that so and so shall not be admitted to bail; the bail is given in spite of that. What is that authority to do? You said before you thought it could do nothing. Sir Hari Singh Gour thinks it can do something?—Sir Hari Singh Gour's case was the other kind of case in which bail had been refused. There, I think, it is quite clear the aggrieved person could do something.

*Mr. Zafrulla Khan.*] Supposing the person is admitted to bail when the Statute regulating the matter says he shall not be admitted to bail?

*Sir Hari Singh Gour.*] In the converse case given by Lord Rankeillour, the prosecutor would go to the High Court according to the tenour of the Federal Act.

*Mr. Zafrulla Khan.*

13,004. I am perfectly certain it is not your ambition to provide in the Constitution Act with regard to individual cases where District Officers can carry out their duties in a statute which is not in conformity with the statute regulating those duties?—I do not see how you can meet all these contingencies in the Constitution Act or any Act of Parliament. It is possible that, if none of the agents will carry out their duties, any system will break down; in fact it is almost certain that it would.

13,005. Supposing a magistrate releases somebody on bail who should not be released in a Provincial State?—It might happen now.

13,006. May I just say to the Secretary of State that the one difficulty that pre-

agents itself with regard to the latter part of this list of concurrent subjects is the difficulty of setting the law in motion?—Two difficulties: the difficulty of setting the law in motion, and, in some cases, the difficulty of expense.

13,007. Now with regard to the difficulty of setting the law in motion, may I suggest that it is not concerned exclusively or even primarily with the question of the Federal or concurrent lists; it might arise even with regard to purely Federal matters. For instance, look at your subject No. 27 in the Federal List at page 114: "Control of cultivation and manufacture of opium and sale of opium for export": supposing there was a Federal statute, I myself do not think that contingency will arise, because I am visualising an ordinary state of affairs between the Provinces and the Federation, but let me put cases like those that have been put on the Concurrent List: supposing somebody cultivates poppies in contravention of the provisions of the Federal statute, provisions which are not looked upon with favour by the Provincial Government, who is going to prosecute?—I should have thought in that case offhand the Federal agent.

13,008. Excise being a Provincial subject?—I was thinking of opium. In the case of opium, there will always be a Federal agent, so I imagine.

13,009. Take Item No. 29 in that list: "Traffic in arms and ammunition, and, in British India, control of arms and ammunition." Supposing somebody was in illegal possession of arms in contravention of the provision of a Federal Statute upon the matter, who would prosecute him if the local government were not willing to carry out those particular provisions of the Federal Statute?—I do not suppose there would be a Federal Officer to prosecute in a case of that kind, so it will have to be the Provincial Agent.

13,010. I therefore submit that the difficulty is not peculiar to the nature of the concurrent list or Federal list. Under the purely Federal list, cases might arise if there was bad faith on one side or the other which might give rise to difficulties?—That is so.

Sir Austen Chamberlain.

13,011. But in the case of subjects on the Federal list on page 114, it would apply?—Yes, there is the power of direction. It does not follow though, as I said this morning, that every Federal service will have its Federal agents in the Provinces.

13,012. But the power of direction will be a power of direction to the Provincial Government and its agent?—Yes.

13,013. That is the remedy in the case of a subject on the Federal list?—Yes.

13,014. But it is a remedy which is not to be open to the Federal Government in the case of a subject on the concurrent list?—Not under our present proposals.

Mr. Zafrulla Khan.

13,015. I beg to differ, Secretary of State. May I draw your attention to paragraph 125, which says this: "It will be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province"? Surely a Federal Statute properly passed, having regard to the provisions on that matter is a Federal Statute applicable to the Province, whether it is on a concurrent subject or on a purely Federal subject?—I dealt with that at some length before Mr. Zafrulla Khan came to the Committee this morning.

13,016. But so far as paragraph 125 is concerned, it would cover both kinds of case?—Yes, but I drew a distinction between the power to give directions and the power to exercise a moral obligation.

13,017. Now with regard to the second part of this paragraph, may I put one question on the other side? The second part of paragraph 125 says: "The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject." I presume that is designed to meet a case where

the administration of a Provincial subject by a Provincial Government prejudicially affects the administration of a Federal subject?—Yes.

13,018. That being so, supposing the question arises as to whether such administration is or is not prejudicial to the administration of a Federal subject, does this paragraph not propose to make the Federal Government the judge itself in a matter in which it is concerned on the one side and the Provincial Government is concerned on the other?—I think that is so; I think it might be said that that was so.

13,019. On the other hand, supposing there was a complaint by a Provincial Government, either under the directions given under this paragraph, or the administration of a Federal subject in a Province was being carried on in a manner which was prejudicial to the administration of a provincial subject, what remedy does the White Paper provide for such a position?—What kind of case now does Mr. Zafrulla Khan have in mind?

13,020. I have not got any case in mind other than the case that is dealt with in the White Paper Proposals themselves, because, as I said, I am visualising an ordinary reasonable provincial Government and an ordinary reasonable Federal Government?—I am making the same assumption, but in the one case I had in mind certain concrete possibilities. I mentioned one this morning, namely, the Public Health Department of a Province rendering null and void the quarantine regulations. That seemed to me to be a possibility, although perhaps a very remote possibility. When Mr. Zafrulla Khan asks me why we do not give a similar power in the interests of the provinces as against the Federal Government, I own that I cannot myself see offhand any concrete case, even a remote one.

13,021. I think it may be possible, Secretary of State (I do not say it is very likely) that a set of quarantine regulations might very seriously circumscribe the beneficent activities of the Public Health Department of a Province?—I will look into Mr. Zafrulla Khan's point. There is every desire to hold the scales evenly between the two authorities, but

we have not put any provision in of the reverse kind that he suggests simply because we thought it was unnecessary.

13,022. May I make a suggestion on that?—Please.

13,023. My suggestion is that in order to meet both those objections, the first that a Federal Government might unnecessarily interfere with a Provincial Government, and secondly that there is no remedy in the converse case if it does occur, there should be a power in the Governor-General on the instance of the Government of a unit or on the instance of a Federal Government to issue such directions as may be necessary on the ground that the administration of its own subject or subjects by the one, prejudicially affects the administration of a particular subject of the other?—I will certainly take that suggestion into account and look into it further.

13,024. And finally on the main subject on which I have been putting questions for such a long time, Secretary of State, my suggestion is this: would not a further revision and reduction of the concurrent list possibly reduce some of the difficulties that have been felt with regard to the administration of some of the subjects in that list? My submission is that the first 10 will cause no difficulty whatsoever: Federal statutes on those subjects: civil procedure; limitation; evidence, marriage, divorce, and all the other subjects that are dealt with, are already being enforced every day by the Provincial Courts, and any amendment of them by Federal statutes will cause no difficulty whatsoever. With regard to subjects 11 to 23, I think if your experts will examine them further, and make an effort to reduce the list if possible, the difficulties will also be reduced to a corresponding degree. That is a suggestion I make, and I think it might help?—I think Mr. Zafrulla Khan's suggestion may be a valuable one. Certainly we will look into the list again. As he knows, we have had a great deal of discussion about the concurrent list, and I think everybody has started with a desire to have no concurrent list at all. The more of these lists you have the more opportunities in the

future for litigation and dispute, and almost reluctantly we have been driven into proposing a concurrent list. The smaller that list the better from every point of view, and we will look into it again.

Mr. M. R. Jayaker.

13,025. Is the Secretary of State aware that there is a strong feeling on the other side that you have introduced into the concurrent list a number of subjects which ought to be central?—There is a very strong feeling in many parts of India that some of these subjects which you have put into the concurrent list ought to be central?—That would be a further argument for reducing it, Mr. Jayaker.

Mr. M. R. Jayaker.] I have no objection if the reduction is by taking them from the Federal List.

Sir Akbar Hydari.] We should have strong objection to that.

Mr. Zafarulla Khan.

13,026. The Provinces would object to that, and would welcome any transfer from the concurrent to the Provincial list?—May I just make this observation: If you remember, before we adjourned, I did suggest that we might possibly have a sub-Committee to go into very technical questions of this kind, my Lord Chairman. I think the fewer sub-Committees we have the better. I had hoped that we might be able to deal with the question in the whole meeting of the Committee, but it might perhaps be of value to the Members of the Committee and the Delegates who are specially interested in this question if I arranged a meeting at the India Office one day and let them meet the constitutional experts and go in rather greater detail into these very technical points.

Sir Abdur Rahim.

13,027. Secretary of State, generally may, I take it that the position with reference to Proposal 125 is this, that the concurrent list is a sort of exception grafted on to Provincial autonomy, and you are reluctant to extend that to the administrative interference of the Federal Government with the Provincial Governments?—Speaking generally, it is

a list of subjects in which the Provinces are primarily interested, and in which the administration will be Provincial. That is the reason why I draw this distinction between that list and the exclusively Federal list.

13,028. As I have understood you, once the Federal Legislature has passed a law under this list it becomes a Provincial law for the Provincial Government to administer; it becomes part of the ordinary law of the Province?—It remains a Federal law, but a Federal law that is valid in the Province.

13,029. It is enforceable in the Province?—Yes.

13,030. In the same way as the Provincial laws?—Yes.

13,031. And, as in the case of the ordinary Provincial law, there can be no guarantee to what extent it is enforced by the Provincial Governments, there can be no guarantee in the case of a law of that nature?—I suppose it is true to say that there is no guarantee in the case of a law of that nature. Government either admits power to the Provinces or refuses to do so. I suppose it is true to say that there is no guarantee in the case of a law of that nature.

13,032. You rely on the fact that some penal law of the Provincial Government is given to you upon two things. I rely on giving to the Provincial Government the power to give the responsibility of the law to the Provincial Government, and I rely on the fact that the Federal Government is not an equal partner in the Provincial Government. I thought, on the other hand, that the Federal Government would be composed to the other case to the Provincial Government. I thought, on the other hand, that the Federal Government would be composed to the other case to the Provincial Government. I thought, on the other hand, that the Federal Government would be composed to the other case to the Provincial Government.

13,033. You have stated that item No. 10 is this: If

be very desirable to have a uniform law as far as possible. I should like to know as a matter of information, that in many of the States on most of the items Nos. 1 to 10, I think, they have got the same laws as in the Provinces with some local variations?—It is so that there is a considerable uniformity now between certain States and the laws in British India.

13,034. And may I take it that the Provinces left to themselves would also in similar matters insist on having a

would like to have the same laws throughout as they have now. They would not make any change unless the local circumstances require a change?—I should hope so. At the same time it is so essential that uniformity should not be broken up in certain directions, for instance, with the Civil and Criminal Codes, that I think some precaution is needed in the Constitution.

13,035. But, so far as the States are concerned, there can be no guarantee that there will not be different laws?—No; I am afraid we have got to accept that fact in a Federation of this kind.

13,036. I take it, so far as the legislation in these concurrent lists is concerned, that it is agreed that the representatives of the States would ordinarily, at any rate, not take any part in the discussion of purely British Indian subjects?—That is very much the attitude the representatives of the States have manifested.

And the British Indians would for such a power that the representatives now does Mr. States should deal with mind?

—That has been the view

13,020. I have expressed other than the think you told us on a in the White Paper that you relied on a sort because, as I said, wing up in regard to ordinary reasonable ment and au Federal Government's the state of things, same assumption, very strong consideration. I had in mind some uniform list for the ties. I mention—We do have one uniformly, the Provincial subjects.

I understand that some States of the quarantine with reference to some to me to subject, and then you have perhaps a present list which concerns only Mr. Zafar provinces?—There must be some not given in the negotiations with the of these. Generally speaking, though, there is one Federal list, and we contemplate the units of the Federation accepting that list.

13,041. As regards the Federal list itself, after No. 48 there is a gap from subjects 49 to 64. I understand that that means that some of the States may not accede to them?—Yes, those subjects there have been regarded as subjects affecting British India, and not the States.

*Sir Hari Singh Gour.*

13,042. Central subjects?—Central subjects.

*Sir Abdur Rahim.*

13,043. So those subjects relating to British India will be exclusively dealt with by the Federal Legislature?—That is what it comes to. They are British Indian subjects pre-eminently, and, being British subjects, they are the kind of subjects into the discussion of which I understand the representatives of the States would not normally enter.

*Mr. M. R. Jayaker.*

13,044. But it is open to any Indian State to federate on any of those subjects?—Yes, and we should like to see the content of the Federation as wide as possible.

*Sir Abdur Rahim.*

13,045. That is something which concerns British India exclusively and not the States. Then there will be a very large number of subjects relating exclusively to British India on which the Federal Legislature will legislate?—These lists, as I say, have been drawn up after a great deal of discussion. All those kinds of considerations we have taken into account, and we think on the whole they are fair to the interests concerned.

*Sir Hari Singh Gour.* My Lord, after the Secretary of State's statement that he proposes to invite a Sub-Committee to discuss these questions with his constitutional advisers, I do not propose to ask any questions.

*Mr. M. R. Jayaker.*

13,046. May I invite your attention to paragraph 125. The fourth line says: "due effect is given within the Province to every Act of the Federal Legislature which applies to that Province." My turn never came to put questions to you this morning, and I never asked you any questions. Is it intended that the words "Act of the Federal Legislature" refer only to Acts under paragraph 111? That is "The Federal Legislature will, to the exclusion of any Provincial Legislature, have power to make laws for the peace and good government of the Federation or any part thereof with respect to the

matters set out in Appendix VI, List I," or does it include Acts of the Federal Legislature which fall under paragraph 114: "The Federal Legislature" (I drop out the unnecessary words) "will have concurrent powers to make laws with respect to the matters set out in Appendix VI, List III." Both are within the definition "Act of the Federal Legislature which applies to that Province." ?—It will refer to both.

13,047. Which of these two do you intend, or do you intend that both these, come within the provisions of paragraph 125? My reason is that if you intend both these Acts to come within the definition "Act of the Federal Legislature which applies to that Province" no difficulty arises at all ?—They both come within the first four lines of paragraph 125.

13,048. Then "every Act of the Federal Legislature" means and includes an Act of the Federal Legislature in the concurrent field also ?—Yes, but the difference of dealing with them is that in the case of the Federal field the Federal Government has under our proposals the power to give a direction to the Provincial Government. In the case of the concurrent field there is no power to give a direction; there is, however, an obligation under the Constitution upon the Provincial Government to carry out the Act of the Federal Government.

13,049. I follow that, but my difficulty is that if, as you say, "Act of the Federal Legislature which applies to that Province" in the fourth line includes both the Acts, how can you say that the next two lines: "the authority of the Federal Government will extend to the giving of directions" can only apply under one of the two Acts ?—That was just the point I tried to explain in my opening statement. The object of my opening statement was to admit that the drafting of these two paragraphs is obscure, and I would ask Mr. Jayaker to read the two paragraphs in connection with the statement which I made at the beginning of our proceedings to-day.

13,050. Thank you. But as to the last two lines, "the authority of the Federal Government will extend to the giving of directions" if we accept your interpreta-

tion that that only applies to the Act under paragraph 111, namely, the Act of the Federal Legislature in the Federal field, then it must be admitted that there is no corresponding provision for giving directions with regard to the Act of the Federal Legislature in the concurrent field ?—That was just the point I emphasised this morning.

13,051. Have you any objection to giving the Federal Government the power to give directions apart from sanction ?—That is just the point that was raised many times this morning.

13,052. I am not talking of sanctions; I am not talking of the power of punishment. I am only asking, limiting it to the power of giving directions ?—I know, but it was just that point that I thought I had dealt with at very great length this morning and earlier this afternoon. I hoped I had made it clear that I thought it was wiser to draw a distinction between these two fields.

13,053. I follow your argument about the objection against giving power to the Federal Government to implement its legislation by enforcing by some penal sanction, but I am asking whether you have an equal objection to giving to the Federal Government the power to give directions ?—I have not an equal objection, but I did hope I had made it clear that I saw a difference between these two fields, and I thought, on the whole, it was better to leave the obligation under the Constitution to operate in the one case, and in the other case to have the explicit directions of the Federal Government.

13,054. The difficulty I feel is this: If you turn to page 118, the list, item No. 74, one of the duties of the Provincial Government will be "The administration and execution of federal laws on the subjects specified in List III." Therefore, you have cast a duty on the Provincial Government to administer and execute Federal laws in the concurrent field. If you have put this duty on the Provincial Government there must be some body who has a right to see that this duty is carried out ?—I am afraid I cannot really add anything to what I have said on this point. Mr. Jayaker will see that



I have dealt with it at very great length to-day.

Marquess of Salisbury.

13,058. But that only has reference to List III?—Mr. Jayaker, I cannot say that a case of that kind would arise, for this reason: All the Federal services will be paid for by Federal revenues.

Mr. M. R. Jayaker.

13,059. And the Federal Government will employ its own agents?—In some cases the Federal Government will employ its own agents. In some cases it will employ the Provinces as its agents, and in the second case it would reimburse the Provinces for the Provincial expenditure.

13,060. There is no limitation of that kind on the power of the Federal Legislature in the Federal field?—No, there is not.

Mr. Zafrulla Khan.

13,061. If Mr. Jayaker would excuse my intervening, with regard to Federal subjects, as the administration of those subjects is also Federal no such limitation is necessary because legislation on purely Federal subjects, if it involves any expenditure, will involve expenditure on the Federal field which must be provided for by the Federation?—That is just what I said.

Mr. M. R. Jayaker.

13,062. I understand the reason; I only wanted to know whether in fact there was any such limitation on the power. You are aware that under the existing law and under the Government of India Act to which your attention was invited by Mr. Zafrulla Khan, in the Schedule to the Devolution Rules (I am asking your attention to Schedule No. 1 to the Devolution Rules under the heading: "Central Subjects") you will find one of the Central Subjects at the present time is Item 16: "Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure," and Item 30: "Criminal law, including criminal procedure." Under your new list both these items have been relegated to the concurrent list?—Yes.

13,063. Having regard to that fact, do not you think the necessity for leaving in the hands of the Federal Government some power to see that the solidarity so far attained in British India in the

13,055. Then I will not pursue it any further. Then, coming to the list to which attention was invited in great detail by Mr. Zafrulla Khan, do you accept his suggestion which ran through all his questions, that taking List III, page 119, as I understood, his suggestion was that there is hardly any subject in that list which requires that the Federal Government should have the power of implementing its legislation. Do you accept that suggestion?—I would not say that I accept the suggestion, or that I dissent from it. I will look into the list item by item again after what Mr. Zafrulla Khan has said, but, speaking generally, I would agree with him that if adequate provision was made in the Federal Statutes, it might be possible for all the items from 1 to 10 to be tested and safeguarded in courts of law.

13,056. Take Item No. 20: "The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as such) arising in another Province." Do you think that the remedy which you have in mind will be an adequate remedy for the enforcement of this right?—I think it might be. I should like to look into the case in greater detail. I think it would depend very much as to what facilities there were for starting an action, and so on.

13,057. Now, going back to paragraph 125, I just want to ask you one question about that. If you turn to paragraph 114, sub-paragraph 2, it says: "The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces." There is no provision in the White Paper imposing such a limitation upon the power of the Federal Legislature with reference to Acts in the Federal field?—I am not quite sure whether I have followed your question.

Mr. M. R. Jayaker.] The power of the Federal Legislature in the concurrent field to pass laws is limited by this fact that it cannot impose financial obligations on the Province under paragraph 114, sub-paragraph 2.

maintenance of civil law and all other things relating thereto, and similar solidarity under the administration of criminal law is maintained in the new Federation?—That is just the very reason why we include it in the concurrent list. It is essentially one of those cases in which uniformity is very necessary in the matter of legislation. The administration is Provincial, but the legislation is concurrent.

13,064. My difficulty was this (I am sorry to press you again on the same point) that if you are unwilling to give the power into the hands of the Federal Government to implement its laws, how is this uniformity to be attained?—I think it will in practice be attained. It is to

the advantage of British India to attain it. At present the administration is Provincial. What I am sure we have got to avoid is a blurring of responsibility, and, when once law and order have been made a Provincial subject, some kind of duality arising in the field of law and order. That is why I appear to be so loth to accept any suggestions that would carry our proposals further in the way of giving the Centre greater coercive powers.

Mr. M. R. Jayaker.] May I pursue my questions next time?

Chairman.] I shall return to you, Mr. Jayaker, when we come back to this subject on Thursday morning.

*(The Witnesses are directed to withdraw.)*

*(The Secretary of State then proceeded to make a Statement on Burma, which is published separately (Record 6).)*

Ordered : That the Committee be adjourned to to-morrow at five o'clock.

12th October 1933.

#### PRESENT :

Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Middleton.  
Lord Ker (Marquess of Lothian.)  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.

Lord Hutchison of Montrose.  
Major Cadogan.  
Sir Austen Chamberlain.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

#### INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

#### BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Lieut.-Colonel Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.  
Mr. N. M. Joshi.

Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Mr. Zafulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.D.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] The proposal this morning, subject to the convenience of the Committee and of the Secretary of State, is that we should renew our examination of the Secretary of State upon "Administrative Relations" and that we should then take the next subject, "Property, Contracts and Suits."

*Marquess of Zetland.*] Will you tell us the numbers of the Proposals, my Lord Chairman ?

*Chairman.*] "Administrative Relations," paragraphs 125 to 129 ; "Property, Contracts and Suits," paragraphs 130 to 135.

*Marquess of Zetland.*] Thank you.

*Mr. M. R. Jayaker.*

13,065. Secretary of State, I was asking your attention to the provisions of paragraph 128. There, Federal purposes are spoken of. I take it that those Federal purposes will be with reference to subjects on which the States have come in the Federation ?—The answer is Yes.

13,066. And some of these Federal purposes would be outside the reserved subjects ?—Yes.

13,067. Now, if that is so, I imagine that the phrase "the Governor-General will be empowered" means the Governor-General acting on the advice of his Ministers so far as Federal purposes outside the reserved subjects are concerned, if you turn to the definition of the expression "Governor-General will be empowered" at page 39 ?—As the proposal stands it is at the Governor-General's discretion. When we have discussed the question before we took the view that it was a point to which the States attach some importance. That is the reason why it is at the Governor-General's discretion rather than on the advice of his Ministers.

*Marquess of Salisbury.*] We are right, are we not, in thinking that whenever the words "in his discretion" or "at

his discretion" are not used, the Governor-General will always be acting by the advice of his Ministers ?

*Mr. M. R. Jayaker.*

13,068. That is what I was asking attention to, at the bottom of page 39, the footnote ?—I would not like to give a general answer. I think, speaking generally, that is so, but there may be one or two cases in which owing to the drafting it is not quite clear.

13,069. Then, following the point further, if these Federal purposes are with reference to Federal subjects outside the reserved subjects, why should it not be the Governor-General acting on the advice of his Ministers, because it is a transferred Department ?—The answer is just the answer I have given, namely, that we did gather that the States attached importance to this point ; that is the reason why we have drafted it in this form. Perhaps, later on, the representatives of the States could give their view upon it.

13,070. Are you not likely to blur the line between paramountcy, by making the Governor-General act at his discretion on questions of this character ?—I think there is that risk. It is one of those difficult points upon which there is a good argument to be made on both sides.

*Mr. M. R. Jayaker.*] Because, as you added on the last occasion, you said that in the enforcement of these Federal purposes in the last resort the Governor-General will bring his pressure to bear under the heading of paramountcy if there is a refractory State which declines to carry out these purposes. I am therefore asking whether, having regard to these considerations, you are not blurring the line between paramountcy and the actions of the Governor-General under paragraph 128.

*Marquess of Salisbury.*

13,071. I should have thought, if I may say so, it would be more convenient that

wherever paramountcy is involved it should be the Viceroy and not the Governor-General?—That, Lord Salisbury, is a different point.

13,072. I apologise. Is it so?—This is a point where paramountcy is not involved; this is a point arising out of the Federal field.

Mr. M. R. Jayaker.] I am not referring to the Viceroy acting. I see the distinction. I am speaking of the Governor-General enforcing Federal purposes by invoking his powers under the domain of paramountcy.

Sir Austen Chamberlain.] Will Mr. Jayaker say if I am right in understanding that he is speaking in connection with paragraph 129?

Mr. M. R. Jayaker.

13,073. Paragraph 128. The Secretary of State said the Governor-General at his discretion will be empowered. Then I am asking if that is so and the enforcement of these Federal purposes by the Governor-General at his own discretion will be by bringing pressure upon a refractory ruler under the line of paramountcy, whether the line is not likely to be obliterated?—I should very much like to hear the views of the States' representatives upon a point of this kind. I admit there is a strong argument to be made on both sides.

13,074. Then I will not press the point further until we hear the Indian States' representatives. Then, may I proceed to another point under that paragraph, the last two lines: "But it will be a condition of every such agreement that the Governor-General shall be entitled, by inspection or otherwise, to satisfy himself," etc. Supposing this adequate standard of administration does not satisfy the Governor-General, will he be entitled to put in Federal agents so that that adequate standard of administration is maintained?—We do not specify any details. It is difficult to specify details because I think the Governor-General's actions must depend so much upon the gravity of the case. It also depends upon to some extent methods adopted in the Instruments of Accession.

13,075. You leave him latitude by the word "otherwise." I imagine?—We leave him latitude.

Sir Austen Chamberlain.

13,075A. I am afraid, I did not catch all the questions, and I am therefore not clear in my mind what is the position as seen by the Secretary of State. May I ask this question: Does he intend the Governor-General, under Section 128, to act as the executive of the Federal Government, or to act in his discretion?—I have just said at his discretion, but I have admitted that it is one of those difficult points upon which there are arguments upon both sides.

13,076. But, the Secretary of State will see that in paragraph 126 and in paragraph 129 the discretion of the Governor-General is expressly stated?—Yes; I admit it is a point of drafting.

Marquess of Salisbury.

13,077. If it is only drafting, it is not worth while dwelling upon it?—In paragraph 128, even though it is inadequately drafted, we do contemplate as at present advised it is also at the Governor-General's discretion, but, as I say, I should like to have the views of the Committee and of the Delegates upon that point.

Sir Akbar Hydari.] I believe the Indian States would like the power to be to the Governor-General at his discretion.

Marquess of Salisbury.

13,078. You see if you take the case where the terms of the States Instrument of Accession do not provide anything then the words would read "The Governor-General will be empowered to make agreements with the ruler of any State for carrying out any Federal purpose." That is to say, as the words stand, unless the words "at his discretion" were inserted, we should have assumed that he would be acting simply ministerially on the advice of his Ministers, but then we go to paragraph 129 where it appears that the Governor-General would be empowered at his discretion, that is to say, without the advice of his Ministers, to issue instructions ensuring that the Federal obligations of the States are duly fulfilled, which seems to cover exactly the same point, so, in paragraph 128, he acts ministerially by his Ministers' advice:

in paragraph 129 he acts at his discretion with his responsibility only to the Secretary of State?—Yes, I admit there is an error in drafting. It is intended at present that both should be at his discretion. Paragraph 128 deals with the making of agreements; paragraph 129 deals with the pressure that the Governor-General should put upon the State to see that those agreements are carried out.

13,079. If it is a matter of drafting I say nothing more?—But it is a difficult point, and I will bear in mind what Mr. Jayaker has said, and we will look into it again.

*Mr. M. R. Jayaker.*

13,080. I take it that the Federal obligations are Federal obligations arising in the transferred field also?—Yes, that is so.

13,081. Then the difficulty I want to put before you is that under the combined effect of paragraph 123 and paragraph 129, there will be a greater and greater tendency to turn the office of the Governor-General at his discretion into an executive office to carry out the behest of the Federal Government, and he will be drawn into politics. You have maintained the Viceroy detached from the States, I quite see that, but under the operation of paragraphs 128 and 129 there will be a greater and greater tendency to convert the Governor-General's post into an office to carry out in an executive capacity whatever the Federal Government wants him to do with reference to the States, and, do you think it is a good position for the Governor-General to occupy?—I admit there is that risk. On the other hand, there is the practical question as to which is the best way of getting the Federal obligations carried out, and it is that practical consideration that has been chiefly in our minds when we make these proposals. We have felt that upon the whole the Governor-General, acting at his discretion, is more likely to have influence with the States than the Governor-General acting on the advice of the Federal Government. There is no more in our proposals than that.

13,082. No: I am only putting my difficulty to you?—Yes, I know; I am putting mine.

13,083. He will be the mouthpiece of the Government without having any control over the Transferred Departments; that will be the position. He will simply be an automation required to be put into force for carrying out the dictates of his Ministers. That is likely to be the position. I want you to guard against that; that is all?—I will take those points into account. The Governor-General, acting at his discretion, would be much more than an automation, but there are these difficulties on both sides, and the practical question to which I would ask the Committee to devote their attention is, which is the best method for getting the will of the Federal Government carried out.

*Marquess of Salisbury.*

13,084. It is not merely a matter of form. The Secretary of State does not mean that. It is not merely a different way of stating the Governor-General acting by the advice of his Ministers. In one case where it is not at his discretion I understand the conception of the White Paper is that the Governor-General would always do exactly what his Ministers advise. I do not know whether that is a good plan, or a bad plan, but that is the conception in the White Paper. When you put the words "at his discretion" it does not mean any longer that he will do what the Ministers advise, but he will do what he himself thinks right. The two things are quite distinct?—I admit the two things are quite distinct, and I hope anything I have said has not suggested that they are not distinct, but I contemplate that in the Federal field, as distinct from the field of special responsibilities, and as distinct from the field of paramountcy, certainly, normally, the Governor-General, whether he is acting at his own discretion, or on the advice of his Ministers, would be working in collaboration with his Ministers, and it is for the Committee to consider whether in the Transferred field it should be at his discretion, or on the advice of his Ministers.

13,085. The Secretary of State will recognise that it is a very difficult matter, because many people contend that, as a matter of fact, the Governor-General would nearly always be acting by the advice of his Ministers and that

the words "at his discretion" do not come to very much in practice, but I understood the contention of the Government was that they were all-important?—Yes, and Lord Salisbury was only this moment arguing that they were very important, and that one differed very much from the other. I agree with him.

13,086. I am only trying to find out what is the intention of the White Paper, and I understand the Secretary of State says the words "at his discretion" would not amount to very much. The Governor-General whether he was acting at his discretion or not would really act on the advice of his Ministers?—Lord Salisbury must not put these very unfair comments.

13,087. If I overstate it, perhaps the Secretary of State will correct me in a moment?—I do very much resent a wide generalisation of that kind being applied to an answer that I have given upon a very technical and difficult point. I was dealing with the Governor-General acting, not in the field of his special responsibilities, or in the field of paramountcy, but in the field of transferred subjects, and I said here it was a question for the Committee to consider whether it was better in this case that he should act at his discretion, or on the advice of his Ministers. I have never suggested that there is not a great difference between the Governor-General acting at his discretion, and on the advice of his Ministers.

Marquess of Salisbury.] I am very much obliged.

Mr. M. R. Jayaker.] In all my questions I have kept that distinction clear in mind. I am not blurring the two, but I only want to point out the difficulty which I want the Secretary of State to examine.

Mr. Manubhai Mehta.] My submission would be that the language in paragraphs 126 and 128 ought to be interpreted similarly as meaning that if in paragraph 126 the Governor-General is empowered to act at his discretion, because he has a special obligation to maintain the peace and tranquillity of the country, similarly in paragraph 128 also the Governor-General has special responsibilities even as regards the Indian

States. Mr. Jayaker referred to the Transferred subjects, but, even as regards Transferred subjects, ultimately there will be the question of enforcement, and, if you will kindly look at the language of paragraph 128, it says, "The Governor-General will be empowered and, if the terms of any State's Instrument of Accession so provides, will be required." First he is empowered; in the other he is required, meaning that if his special responsibilities want that any particular agreement should be entered into he is empowered, and there it must be at his own discretion; while he may act on the advice of his Ministers (he *may* I said) in the transferred field, and there it is required; so I would interpret, both in paragraphs 126 and 128, the Governor-General to be acting at his discretion.

Mr. M. R. Jayaker.] The answer to that, Sir Manubhai, is that in paragraph 126 grave menace to the peace and tranquillity of India are admittedly the special function of the Governor-General under paragraph 18. We are now referring, as the Secretary of State has admitted, to the fact that paragraph 128 covers Departments which are purely transferred Departments. With reference to such Departments the Governor's responsibility can only arise under Paragraph 18 (f) "The protection of the rights of any Indian State," but, with regard to the expression "protection of the rights of any Indian State" you find a complete explanation of what that means in paragraph 28 of the Introduction. That explains what that paragraph means, and, if you take the explanation in connection with this wording, it does not include rights of this character at all. Rights of enforcement of Federal purposes on the States is not included according to that explanation in paragraph 18 (f).

Sir Austen Chamberlain.] The Secretary of State used the words, and perhaps he could therefore answer my question: In what sense is the phrase "transferred subjects" now being used by him and others. Hitherto transferred subjects, I think, has generally meant subjects which had been transferred or would be transferred to the Provinces.

Marquess of Reading.] That is right.

*Sir Austen Chamberlain.*

13,088. We are now talking, as I understand, of transferred subjects in quite a different sense?—I was using the term “transferred subjects” in the sense of all the Federal subjects other than those reserved to the Governor-General, namely, Defence, the Ecclesiastical Department, and so on.

13,089. Federal subjects other than those subjects which are reserved to the Governor-General?—Yes.

*Mr. M. R. Jayaker.*

13,090. Transferred to Ministerial responsibility?—Yes.

*Mr. Y. Thombare.*

13,091. Then the expression “The rights of an Indian State” used in Proposal 18 (f) is very wide. It cannot necessarily be restricted to rights in the Non-Federal sphere, and, therefore, the Governor-General has a special responsibility also in regard to the transferred subjects?—I would not go so far as to accept a very general statement of that kind.

*Mr. M. R. Jayaker.*

13,092. I think there is great danger if you were to interpret the words “protection of the rights of any Indian State” in the way Mr. Thombare is asking you to interpret them, namely, that it includes also those subjects which are transferred to Ministerial control. You will create an impossible position?—That is why I put in a word of caution at once.

*Mr. Y. Thombare.]* But the wording itself is very wide “The rights of any Indian State.”

*Mr. M. R. Jayaker.]* That is all I ask, my Lord.

*Lieut.-Colonel Sir H. Gidney.*

13,093. My Lord Chairman, I have only one question to ask the Secretary of State. It refers to the relationship between the Federal Government and the units so far as the minorities are concerned. If the Secretary of State will pardon me—he will correct me if I am wrong in my conception of the situation

—I gather from paragraph 18 that the Governor-General has a special responsibility in safeguarding the legitimate interests of the minorities. In paragraph 70 the Governor has a similar power. I also notice that on page 36 of the First Round Table Conference Report, Head C: “Provincial subjects subject to legislation by the Indian Legislature,” that Item 47, on page 36, refers to the Control of Services, and it states as follows: “As regards public services within the Province other than All-India Services.” Then taking a reference to the Services Sub-Committee on page 67 of the First Round Table Conference, paragraph 5 (2), it states that the Provincial Public Services shall be under the control of or the recruitment by the Public Services Commission. I want to draw the Secretary of State’s attention to the last paragraph, which reads as follows: “The Governor shall before considering any appeal presented to him against any order,” etc., etc., “consult the Commission.” Secretary of State, I only want to have my mind clear on this matter, and it is to clear this question: In the event of a Minister or the Ministry or the Governor deciding adversely against a minority community what appeal would that minority community in a province have in such an event?—I do not offhand see the relation of this point to these paragraphs, but anyhow, be that as it may, my answer would be that the Governor in this matter would be acting as the agent of the Governor-General, and I assume that the Governor-General would look into a case like that if there were a feeling of grievance, but there is nothing in the nature of a formal appeal.

13,094. Then does that mean, Secretary of State, that the special responsibility of the Governor-General cannot be enforced?—Not at all; it can be enforced.

13,095. In what way, may I know?—He can give a direction to the Governor and the Governor has to carry it out.

13,096. Supposing the Ministry does not carry out what the Governor tells them, or the Minister in charge of the Portfolio does not?—Then the valid order in the Province is the order of the Governor.

13,097. I am just trying to clear my mind : In the event of a Minister refusing to carry out the Governor's order in the protection of a minority, how can the Governor-General see that his orders are carried out ?—He gives a valid order, and the machine of government carries it out. If the machine of government does not carry it out then there is a breakdown in the constitution.

13,098. I may be wrong—forgive me pressing the point—but I think when Sir Austen Chamberlain asked you a question a few days ago you almost admitted that the Governor-General had no executive powers in certain fields, such as the concurrent field, and other matters. Has the Governor-General an executive power here to see that his orders are carried out ?—Certainly. The two questions are totally distinct. In the case of the concurrent powers it was an entirely different state of affairs. There we were dealing with a state of affairs in which the administration was Provincial—in which the subjects were mainly Provincial, but in which there was a necessity of having some kind of uniformity. That had nothing whatever to do with the field of special responsibilities of the Governor or of the Governor-General. In the field of the special responsibilities the only valid order would be the order of the Governor and the order of the Governor-General in the event of a difference of opinion of this kind.

13,099. Do I gather from that, Secretary of State, that, taking the past as the criterion, where the Instrument of Instructions gave the Governor special powers which have never been carried out in the direction of minorities, then, that the matter rests with the Governor and if the Governor-General orders it he has to carry it out ?—Yes, certainly, and it is a statutory obligation.

13,100. Then may there be any appeal from a minority community against a Governor's adverse decision ?—I have just given an answer to Sir Henry ; it is no good my giving the answer time after time. I have just said there is no formal appeal.

13,101. Then how could the grievance be redressed ?—The Governor-General could redress them if he thought fit.

What sort of appeal has Sir Henry in mind ?

13,102. Supposing, as recently happened in Bengal where communal differences were created, the community themselves would have no appeal to the Governor-General but only to the Governor ?—There is no right of formal appeal ; I have just said so.

13,103. Then do I gather that the safeguards of minorities are separate in the Provinces as in the All-India Services ?—No ; the chain of responsibility is : Governor, Governor-General, and British Parliament.

13,104. I am very sorry—maybe I am dense—but what I really did want to know was how could one get to the Governor-General ?—I imagine a Memorial would be sent to the Governor-General in a case of that kind.

Lieut.-Colonel Sir H. Gidney.] Thank you. I do not want to ask any more questions.

Mr. N. M. Joshi.

13,105. May I ask, my Lord Chairman, a question as regards the statement which the Secretary of State made last time, that a Sub-Committee may be appointed to go into the details of certain questions ? May I know what the exact idea is ?—I would be ready to make any arrangements that suited the Committee and the Delegates. I would suggest that those Members of the Committee and the Delegation who are specially interested in this question should give in their names and I then could arrange a suitable meeting with the experts present, but I would make any other arrangements that suited better. That is what was in my mind.

13,106. Will the proceedings of that Sub-Committee be formally recognized by the Committee ? Will they be published ?—That is entirely for the Committee and the Delegates to settle. I have no view one way or the other ; I do not mind one way or the other.

13,107. As regards the main question in Proposal 125, I do not wish to examine you in detail because you have replied to the question of Sir Austen Chamberlain, that you will consider whether the Federal Government should have power



in some matters at least to give directions or not?—Yes.

13,108. If the Federal Government does not possess the power of giving directions to the Provincial Governments, then, in some cases, legislation passed by the Federal Legislature will really be legislation of optional application to Provinces, if the Provinces do not give effect to the legislation and the Federal Government has no power to give directions?—The position is not quite that, Mr. Joshi. The legislation would not be optional, it would be the only valid law in the Province.

13,109. Yes, but where the legislation requires some measures to be taken by the Provincial Government, to that extent it will be of optional application?—It remains the obligation of the Province to carry it out. It is not optional for the Province to carry it out.

13,110. If you take away the power of giving directions under what section do you consider that there would be an obligation on the Provincial Government?—Under Proposal 125.

13,111. No. Under 125 there is no obligation on the Provincial Government to carry out the measures?—Yes; it is intended and we will make it clear in subsequent drafting that there should be an obligation. The point of difference that we discussed at some length the other day was whether in the concurrent field you should go further than stating an obligation, and whether you should give the Federal Government the power of issuing instructions. That point I said I would reconsider in view of the discussion that took place, but in either case there would be an obligation on the Provincial Government to carry out legislation of that kind.

13,112. Last time you expressed some apprehension that if the Federal Legislature legislates on concurrent subjects, in some cases there is a danger of the Federal Legislature passing legislation against the sentiments and feelings of the Provinces. The question which I want to ask you is this: Considering the constitution of the Legislatures which are based upon mostly territorial constituencies, do you think there is any real danger of the Federal Legislature

passing measures which are against the Provincial sentiments and feelings?—I hope that there would not be; at the same time, one has to remember the fact that one Province in some respects differs from another Province and that, taking the case of social legislation, the case, I expect, that is very much in Mr. Joshi's mind, you have got to take into account these differences of social conditions. You have also got to take into account the question of expense. One has got to avoid, if it is possible to avoid it, the Federal Government passing legislation that will impose a very heavy charge upon Provincial revenues. Those are the difficulties that surround this question.

13,113. As regards the expense, it is a different question, and that is provided for by Proposal 114?—Yes.

13,114. I was dealing with questions which do not involve expense. I fully realise that it is quite possible that the Federal Legislature may pass legislation which is totally opposed by one or two Provinces?—Yes.

13,115. That is likely to happen. But is it not true that it is only in such cases that the usefulness of the Federal Legislature can be expressed? I shall give you a more definite statement: That the usefulness of the Federal Legislature is of two kinds—first, to bring uniformity where all the Provinces want uniformity; and, secondly, to bring uniformity where not all the Provinces want uniformity and one or two Provinces take an obstructive attitude. If one or two Provinces take an obstructive attitude and most of the Provinces want legislation, it is in such cases that the usefulness of the Federal Legislature really is expressed and is valuable by a sort of coercing of the obstructive Provinces?—I quite admit the strength of Mr. Joshi's argument. It is particularly applicable to labour questions. The practical difficulty is the difficulty of forcing an autonomous Province to do what it is determined not to do, and, whilst I fully realise the necessity of safeguarding uniformity of labour conditions, I do see great difficulty in providing any practical provisions that are going to force a Government to apply

legislation that it is determined not to apply. I hope the case will not arise, but if the case did arise I cannot see what any sanctions are really going to effect. I think what one can hope is that by passing the concurrent legislation you create a general public opinion in India upon the subject, and that it makes it very difficult for one Province to hold out, but when it comes to going further and applying sanctions, I cannot see what kind of sanctions you can effectively apply.

13,116. I would like to ask you a question about this subject of financial burden, as stated in Paragraph 114. Last time when you gave evidence you stated that the second part of that Paragraph 114 requires some modification. The second part of Paragraph 114 reads thus: "The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces." And you stated last time that this requires a little modification. May I ask you whether you have considered what form the modification will take?—As the proposal stands now, it would enable a single Province to hold up any social or labour legislation if it involved any kind of expenditure upon the Provinces even though every Province in India except one was in favour of that legislation. I think that goes too far; I do not think you ought to give a *liberum veto* to a single Province to hold up legislation of that kind; I think therefore it ought to be so modified as to make it possible for legislation of that kind to be passed, always with the proviso that I made just now, that I cannot see what sanction you can apply to a Province if the Province is determined not to carry out that legislation.

13,117. I am not asking about the Centre now. I want to know whether there is any definite formula which you have thought out giving certain freedom to the Federal Legislature to pass legislation involving some expenditure?—The difficulty Mr. Joshi is this: How can you compel a Provincial Legislature to vote the necessary supplies? The Provincial Legislature is autonomous. This is a case in which the administra-

tion is Provincial. Is there any practical way of forcing a Provincial Legislature to vote the money?

13,118. No. As I read the Second Part, there are two ways in which the financial burden will be thrown upon the Provinces by a Federal Legislature, first by putting an obligation upon the Provincial Legislature or the Provincial Government to spend some money of the Provincial Treasury by Grants, and secondly by putting some obligation upon the Province by which the work of the staff may be increased, and that may be considered as a financial obligation. Now, cannot the draft make it clear whether it refers only to the Provinces being freed from obligation to make any grants from the Treasury, or whether it should apply even in the case of some additional work to the staff?—I would have thought that with any important proposal it will come to very much the same thing, will it not, that an increase of staff would mean an increase of expenditure?

13,119. Quite possibly; I therefore wanted to know whether you had thought about some formula by which the modification which you intended to make would be made effective?—The kind of modification I had in mind was a modification allowing proposals of this kind to be introduced and to be passed as Federal Legislation; but I have not been able to see any effective way of going further, and making certain that a recalcitrant Province would find the money. If Delegates and Members of the Committee can suggest such a way without striking at the very root of Provincial autonomy, I should be very grateful.

Mr. Morgan Jones.

13,120. That was the point you had intended the Sub-Committee to discuss, amongst others, was it not, Sir Samuel?—No. I was thinking more of the list, whether particular subjects should come into the concurrent list and so on.

Marquess of Zetland.

13,121. May that be clear? Does the Secretary of State tell us that it is his intention to alter the second paragraph of proposal 114?—I think it goes too

far at present ; it would stop the introduction of labour legislation altogether. One Province could stop it. I think that goes too far.

13,122. It is, therefore, your intention that that should be altered ?—Yes. I will try to think out a formula. If I can get it ready in the next few days or few weeks, I could bring it to the notice of the Committee.

Mr. N. M. Joshi.

13,123. May I ask one general question on paragraphs 128 and 129 ? You stated that in order to meet the wishes of the States you would give power to the Governor-General, not acting on the advice of his Ministers, but the Governor-General, acting at his discretion even in cases where the Federal Government has to exercise some authority over Indian States. The question which I want to ask you is this : You are trying to meet the wishes of the Indian States, but may I ask you whether you have considered what will be the effect on British India if British Indians find out that constitutionally although the Indian States have joined the Federation, the Federal Government as a Government has absolutely no authority over the Indian States as regards matters which are transferred to the Federal Government, because, in so far as you give the power to the Governor-General at his discretion, the Federal Government has no authority. It is the Governor-General at his discretion who will have authority. I want to know whether it will not be the feeling of people in British India that although the Indian States have joined the Federation the Indian States are in no way under the authority of the Federal Government ?—But that would not be the case.

13,124. Why ?—It would not be the case for this reason : That paragraph 128 deals with cases in which there is no Federal agency in the State, by agreement. There will, it is presumed, be a Federal agency for many Services in many States. For instance, I think the case of Posts and Telegraphs is a case in point. Mr. Joshi's general conclusion, therefore, is much too wide. Whether public opinion in British India

approves or disapproves of certain rather technical provisions for dealing specially with the States I could not express an opinion upon. What I am chiefly interested in is the most effective way of getting the decisions of the Federal Government carried out. My advice so far has gone to show that this is the most effective way of doing it. At the same time, I have admitted the strength of the arguments that have been used this morning on the other side and I am perfectly prepared to look into them again.

13,125. Do you really mean, then, that although the wording of the Clause places the Governor-General at his discretion in the transferred field, it should be the Governor-General acting on the advice of the Ministers ?—I think I have stated my position this morning, and it is this, that I still think that paragraphs 128 and 129 as at present drafted are the most effective way of getting the Federal Government's will carried into effect, but I will consider the points that were urged by Mr. Jayaker this morning and take into account his very strong arguments.

13,126. Now, as regards paragraph 129, I do not know why the power should be given to the Governor-General at his discretion to see that effect is given to the measures proposed by the Federal Government and not to the Governor-General acting on the advice of his Ministers. What is the difference between the Governor-General making arrangements for inspection and the Governor-General having power to see that effect is given to the proposals of the Federal Government ?—Here again we thought that it was the most effective way in which the Governor-General could bring his pressure to bear upon a recalcitrant State. It was the view generally accepted so far as I remember at the last Round Table Conference. If Mr. Joshi would look at page 34 of the Proceedings of the last Round Table Conference he would find at the end of the Report this sentence : "Finally it was agreed that power should rest in the Governor-General personally"—that means at his discretion—"to issue general instructions to the States' Governments for the purpose of ensuring that their obligations to the Federal Govern-

ment specified in this paragraph were duly fulfilled."

13,127. Apart from what the Round Table Conference Report said, may I ask this question : If the Governor-General at his discretion is introduced even into the transferred field, constitutionally speaking, apart from the practical effect, even legislation passed by the Federal Legislature will be of optional application to the States. I am not suggesting what the practical effect will be, but constitutionally speaking the legislation is only of optional application to the States ?—That is not so at all. The legislation is the authorised Federal legislation of the Federation to which the States have acceded and to which the States have, to that extent, surrendered their sovereign powers. There is no question of option about it.

13,128. True, but, if only the Governor-General at his discretion has the power to see that it is enforced, the application so far as the Central Government is concerned is optional ?—That is not the conclusion I draw.

Mr. N. M. Joshi.] It is the conclusion which ordinarily people will draw, if you say the enforcement depends upon the Governor-General at his discretion. My Lord, I have no more questions to ask.

Dr. B. R. Ambedkar.

13,129. Secretary of State, I just want to draw your attention to the present position of the concurrent field under the Government of India Act. I am anxious to do so because it was suggested to you that under the present Government of India Act only certain subjects or parts of certain subjects are made subject to the Central Legislature. The point that I wish to draw your attention to is that, first of all, there are some Provincial subjects which are made specifically concurrent under Part II of Schedule I to the Devolution Rules ?—Yes.

13,130. While subjects although they are made Provincial are controlled by the proviso that they are subject to the Central Legislature ?—Yes.

13,131. I have made a computation that out of the 51 subjects which are included in Part II of the Schedule

to the Devolution Rules, 41 are made expressly subject to the Central Legislature, or to rules made by the Central Government or the Secretary of State. That is one thing. The second thing is this : That all Provincial matters are subject to concurrent jurisdiction by the Central Government under Section 67, Sub-Clause (2) of the Government of India Act by previous sanction. Although any subject is regarded under Part II as a Provincial subject, it is none the less open to the Central Government to legislate upon the whole of that Central subject provided previous sanction is obtained from the Governor-General ?—Yes.

13,132. On the side of the Provincial Government control is exercised by the Central Government on the concurrent field under Section 80 (a), whereby the local legislature of any Province may not without the previous sanction of the Governor-General make or take into consideration any law for regulating any Central subject or regulating any Provincial subject which has been declared by rule or law as being subject to the Central Legislature, or affecting any power expressly reserved to the Governor-General in Council by the law for the time being in force. That is the present position ?—Yes.

13,133. That is practically all of the Provincial field as also the concurrent field provided the sanction of the Governor-General is obtained ?—Yes ; that is so.

13,134. Now under the present proposals the whole thing is completely altered. I mean the concurrent power of the Central Legislature is proposed to be taken away in most of the matters ?—Except in the List 3, yes.

13,135. I want next to draw your attention to List 3. I am sorry I lost my paper which I completed, but I think I am right in suggesting that a great many of the subjects included in List 3 are to-day either exclusively Central or concurrent ?—Yes, I think it might be said that a number of them certainly are.

13,136. Consequently it would be fair to suggest that under the present Government of India Act your concurrent List has always been treated as predominantly of All-India importance,

under the Government of India Act as it is to-day, they being included either in the purely Central List or in the concurrent List. My suggestion is that under the Government of India Act the field which is now concurrent was regarded in the Government of India Act as of All-India importance?—Yes; I think that generally is so. I think it is inevitable under a unitary form of Government.

13,137. Quite so. My suggestion, therefore, Secretary of State, is this: That it would not be quite correct to say that a field of legislation which was under the Government of India Act regarded as of All-India importance is administratively to be hereafter regarded as purely Provincial,—No. I should draw a great distinction between the conditions under a unitary form of Government and the conditions under a Federation in which the Provinces are autonomous. We are quite definitely changing the form of Indian Government from a highly centralised Government into a Federal Government.

13,138. But I am only talking about the importance of the subject, a subject which, up to 1901, was regarded as of All-India importance, could not all of a sudden cease to be of All-India importance and become purely a local matter. I am aware that a great deal of concession has to be made for the new Provincial Government; the fact that the Government of India has up to now been regarded as more than of local importance has always to be recognised?—I think it is very difficult to make such a comparison when it is admitted that the form of Government proposed is a very different type of Government. I think new conditions enter into the problem as soon as you move away from a unitary Government to a Government of Federation with autonomous Provinces.

13,139. I will not press the point further, but I wanted to draw your attention to the fact that these subjects have hitherto been regarded as of more importance than purely Provincial subjects?—I suppose, however, it would be fair to say that in most of them administration even under a highly centralised Government, has been Provincial.

13,140. Yes; subject to the control of the Centre?—There again, I do not think that Dr. Ambedkar's comment upon my answer quite covers the whole field. It would not cover the transferred field in the Provinces?

13,141. No; that is so. Next, I want to draw your attention to Proposal 125 and to Section 45 of the Government of India Act. Section 45 of the Government of India Act is what is called the Obedience Clause, and lays down that a Provincial Government shall be under the superintendence or the control in all matters relating to the Government and its Province and will also diligently and constantly inform the Government of India of its proceedings in all matters which ought in its opinion to be reported so as to give the required information. Now, what I would like to know from you, Secretary of State, is this: What is it that you wish to delete from the provisions and requirements of this Section 45? I see you do not want superintendence. That, of course, is obvious when the Provinces become autonomous. You want to retain direction only with regard to those matters which would be non-concurrent?—Yes.

13,142. And there is to be no control? Now the question that I want to ask is this: Do you desire that the Central Government should be kept informed of what is happening under the field of Provincial administration, and do you desire that the Central Government should have the power to call for information with regard to the administration of any Provincial subject, so that it may inform itself of what is happening?—No; we do not have any such general intention. We assume that as soon as you set up a Federal Government you must then have a definite allocation of powers between the Federation and the units. In many respects, the clearer you keep that division, the less likely it is that responsibility should be blurred, and the less likely it is that there will be incessant controversy between the two kinds of Government. Quite definitely, under our scheme—indeed, it is one of the basic principles of it—we now divide up these various duties between the Federation, the Provinces, and the Imperial Parliament.

Mr. N. M. Joshi.

13,143. May I ask a supplementary question? As regards the point of information raised by Dr. Ambedkar, I want to ask you this: In some cases, of the compilation of statistics relating to All-India will be valuable. Such, for instance, as figures of All-India as regards Education. At present, although education is a transferred subject, the Government of India issues an All-India Report. Will the future Government of India possess power to collect information as regards transferred subjects and spend money upon the compilation of an All-India Report?—Only within the specified Federal field; anything outside the Federal field must be done by agreement.

Mr. N. M. Joshi.] Education is not in the Federal field.

Lord Eustace Percy.] I am sure, Secretary of State, you are bearing in mind that in every Federation, for instance, in America, the research and statistical departments of the Federal Government go far beyond the Federal field?

Mr. N. M. Joshi.

13,144. For instance, in America, they do publish an Educational Report for the whole of the United States?—Yes. If Lord Eustace will look now at Appendix VI, List 1, he will see there that we have covered his point, that the Census and so on is included in the Federal field, and there, I think, we must consider the point of All-India statistics generally—statistics, that is to say, for the purpose of Federation.

Lord Eustace Percy.

13,145. I do not understand quite why it is necessary to limit it in that way. There is no reason why a Federal Government should not publish information and why its information should be entirely confined to the Federal field. It is not so in any other Federation. I have ever heard of?—But, surely a Federal Government can only act for the purposes of Federation. A Federal Government has no *locus standi* outside the field of Federation.

13,146. Of course, it cannot publish a report on the intellectual and moral pro-

gress of India if the Provincial Governments will not supply the information, I agree, but that hardly need be anticipated?—I do not think there is any difference of opinion between Lord Eustace and myself; my comment was only directed towards keeping this kind of activity within reasonable limits. If a Federal Government constantly worried Provincial Governments for all sorts of information that had nothing to do with the Federal Government, then, I can foresee constant difficulties arising between them.

Dr. B. R. Ambedkar.

13,147. Might I give this instance, which comes to my mind? Supposing, for instance, in a particular Province, criminal proceedings are taken against a foreigner and reference is made by his Government to the Government of India with regard to the proceedings taken against this particular foreigner in a Province, and the Government of India needs information in order to deal with the subject: Would the Government of India be in a position to require the Provincial Government to furnish information with regard to that subject?—Yes, and also to take action. It would come within the field of foreign affairs.

13,148. I submit that law and order would be a transferred subject?—That may be so, but foreign affairs have a special reservation. This Clause 125, which you are discussing now, I think, would cover that. Foreign affairs is a Federal subject. Under the second paragraph of Clause 125 the Federal Government could give directions to the Provincial Government.

13,149. I mean, you see the necessity of the Central Government obtaining such information as is necessary for its purpose?—Certainly, and I accept the need.

13,150. I thought I would draw your attention to it because I do not find the information in Proposal 125?—I think that presupposes obtaining the necessary information from the Provincial Government. It is intended to, anyhow.

13,151. Now, with regard to Proposal 114, there is a proviso tacked on to it that the concurrent power shall not be exercised so as to impose a financial

burden. What I would like to know is this: If there is a dispute that a particular proposal does impose a financial burden, one party contending that it does not, another party contending that it does, how is this dispute to be resolved? Largely and broadly, for instance, the Central Government proposes a new service to be carried on by the new Provinces, one could draw the conclusion that such a thing would impose a financial burden, but there might be cases on the border-line where there might be a dispute?—As the provisions stand at present, recourse would be to the Federal Court. That may not, however, be sufficiently comprehensive a method and, as I said the other day, we are considering the possibility of some kind of arbitral procedure to apply in cases that were not suited for settlement by the Federal Court.

Mr. M. R. Jayaker.

13,152. It would fall at present under paragraph 155 (i)?—Yes: the Federal Court.

Dr. B. R. Ambedkar.

13,153. There is just one more question I would like to ask you, Secretary of State, because I am not clear about it. What I want to know is this: With regard to these administrative relations, first of all, is the Central Government bound to employ the Provincial Governments as its agents?—Yes, in the concurrent field.

13,154. It is bound to?—Yes.

13,155. It cannot employ its own agents?—It is our intention that the administration in the concurrent field should be Provincial.

13,156. Subject to a question of whether its directions can be given or not—that is another matter?—Yes.

13,157. Then it would also follow that the Provincial Governments are bound to take up the work of the agency of the Central Government if they are called upon?—Yes, under the Federal law.

Marquess of Lothian.

13,158. Am I to understand you to say that the Federal Government cannot

create an agency in the concurrent field if it finds that it cannot get adequate co-operation from the Provinces, or do you expect the Provinces to do it?—Lord Lothian was not here when we discussed points bearing upon this at some length the day before yesterday. My contention then was that in the concurrent field the wisest course was to leave the administration provincial.

13,159. I just ask the question whether it would be prohibited—whether there was any inhibition on the Central Government in the last report creating another agency if it chose to do it. There would not be any prohibition of that?—Provision 113 restricts the Federal administration to Federal subjects.

13,160. Yes?—That, incidentally, excludes the Federal administration from the concurrent field.

Mr. N. M. Joshi.

13,161. May I ask one question on that. If you look at Item 21: "Regulation of Medical and other Professional qualifications": this is concurrent. Under this it may become necessary to establish an All-India Medical Council. How can the Provincial administration be utilised for forming an All-India Medical Council? The Federal Government must possess some power to create its own machinery?—I do not think I have quite followed Mr. Joshi's point. Would he mind putting it again?

13,162. Item 21 is: "Regulation of Medical and other Professional qualifications." This will require the formation of an All-India Medical Council?—Yes.

13,163. An All-India Medical Council cannot be established through the Provincial administrations; it must be an organisation of the Federal Government?—I am not quite sure of Mr. Joshi's difficulty. The Medical Council would be created by the Federal Legislature, but would it be a Federal organisation?

Lieut.-Colonel Sir H. Gidney.

13,164. It is Federal now?—The point is new to me. It is a detailed point. If Mr. Joshi will let me look into it I will be glad to do so.

Mr. N. M. Joshi.

13,165. On the same lines, may I ask you also to consider whether the Federal Government will possess power to create an organisation for co-ordinating certain activities where even the Provincial Governments want co-ordination. I will give you an instance. Supposing all the Provincial Governments agree to have some Agricultural Council, as they have to-day, or they may agree to have an Inspector-General of Health in India, or they may agree to have a sort of Industrial Council—?—We have already covered this point, Mr. Joshi. We think that arrangements of this kind would probably come about by agreement, and if Mr. Joshi will look at Item 42 on page 115 he will see that we have included a provision to enable the Federal Government to undertake work of this kind.

Lieut.-Colonel Sir H. Gidney.

13,166. Secretary of State, do not you find it in List III, the Concurrent Subjects, on page 119. Item 21, in reference to the former question, the Medical Council body: "Regulation of medical and other professional qualifications"?—Yes, Sir Henry, it is in List III because the administration would be Provincial, but, as I say, I am looking into this point of the Medical Council again.

Mr. N. M. Joshi.

13,167. The words "central agency" refer to any kind of central organization, even in the Transferred and Provincial field?—Yes, to any kind of central agency, but, quite obviously, a central agency outside the Federal field would have to come into being with the agreement of the Provinces.

Sir Austen Chamberlain.

13,168. As you are referring to Item 42, may I ask whether the word "central" is intended to apply to the institutes for research as well as to agencies? I presume it is not intended to prevent a Province from establishing a local institute of research?—No; "central" is obviously meant to cover both.

Lord Rankeillour.

13,169. My Lord Chairman, may I ask a question on this point to clear up something that we discussed the other day? Secretary of State, you will remember that under No. 125 you told me that the use of the words "Federal subject" covered "Reserved subjects" throughout the Proposal?—Yes.

13,170. Under Proposal 125, in both paragraphs, it will be the Federal Government which will give the directions to a Provincial Government with regard to the three Reserved Services, will it not? It says so?—The answer is Yes and No. If Lord Rankeillour means the Federal Government giving directions just as they would in departments that were not reserved, the answer is No. If, however, he means by the Federal Government the Governor-General acting at his discretion that is the constitutional position of the Governor-General in a matter of this kind. The Federal Government in this case, in the case of a Reserved Department, is the Governor-General acting at his discretion. Then the answer is Yes.

13,171. In the very next section you have "The Governor-General will be empowered in his discretion," and I submit the natural construction of that would be that in the previous paragraph "the Federal Government" meant the Governor-General on the advice of his Ministers?—I do not think it is the natural construction, but if it is we will change it. The position is, as I have stated it just now: and that is our intention, and we will see that our intention is carried out in any future draft.

13,172. That it shall be the Governor-General at his discretion?—That is what it comes to.

Mr. M. R. Jayaker.

13,173. May I refer in this connection to paragraph 55 of the Introduction the last four lines: "The latter provision will cover all classes of Federal subjects, including those administered by the Reserved Departments." This is the material sentence: "In the latter class of subjects, the directions will, of course, be issued by the Governor-General"?—Exactly. That is just my



point, and that is really the answer, under the White Paper, to Lord Rankeillour's question.

Lord Rankeillour.

13,174. But you do need to change the wording here to make it clear?—We will look into that. If it is needed to change it we will change it.

Lord Rankeillour.] Thank you.

Sir Austen Chamberlain.

13,175. May I ask a question before we leave the subject? Secretary of State, is there anything in India that corresponds to the practice we have here of leaving orders to be made by His Majesty in Council for the execution of the provisions of certain laws that are passed by Parliament? Is there anything equivalent to that in an order by the Governor-General or by the Governor-General in Council?—Something in the nature of Indian Orders in Council?

13,176. Pursuant to Statute?—At present, Sir Austen will remember that there are statutory rules made under the various Government of India Acts. His question is directed to the future—whether powers of that kind are in these proposals?

13,177. Yes, I put that. Would cases arise where the Governor-General made rules in pursuance of a Statute?—Yes, but only so far as the Statute said so.

13,178. Yes but the Statute might for convenience of execution provide that statutory rules should be made by authority of the Governor-General?—Yes.

13,179. If he made such a statutory rule that rule would be a lawful order, would it?—Yes.

13,180. Then will the Secretary of State look at paragraph (g) of Proposal 70 and consider its bearing upon such orders when issued by the Viceroy pursuant to Statute in the concurrent field? Proposal 70 says: "In the administration of the government of a Province the Governor will be declared to have special responsibility in respect of (g) securing the execution of orders lawfully issued by the Governor-General"?—Yes.

13,181. I merely want to call at this moment the attention of the Secretary

of State to the fact that apparently in pursuance of a Statute in the concurrent field, the Governor-General might give such orders and that then under Proposal 70 it would be the duty of the Governor to see that they were obeyed?—I will look into Sir Austen's point. Offhand, I would say that sub-section (g) of No. 70 refers to orders given at the Governor-General's discretion, but I will look into the point.

Marquess of Salisbury.

13,182. I am sure the Secretary of State will not think I want to catch him out in any inconsistency, in this very complicated subject, but he told me only a day or two ago that Proposal 70 only referred to orders given by the Governor-General acting on his special responsibilities?—That is so. I do not think anything I have said this morning changes that view.

Sir Austen Chamberlain.

13,183. I think that is exactly what you have just replied to me?—But I will look into Sir Austen's point. I think I see what is in his mind.

13,184. What I thought was that sub-paragraph (g) of paragraph 70 might perhaps provide a solution of the point on which he and I differed yesterday and I merely wanted to direct his attention to it from that point of view?—Thank you; I am much obliged for the suggestion.

Mr. Morgan Jones.

13,185. I understood the Secretary of State to tell me on Tuesday that he could not offer sub-paragraph (g) in the sense Sir Austen has now indicated because it fell within the paragraph dealing with special responsibilities?—That is the answer I have just given this morning again, but I will look into this very technical point again.

Sir Austen Chamberlain.

13,186. What I am inviting the Secretary of State to do is to consider, apart from the technical point, or apart from the meaning of it as it stands in paragraph 70, whether that is or is not an applicable machinery to the case we were

discussing the day before yesterday?—Yes, certainly.

*Dr. Shafa'at Ahmad Khan.*

13,187. Secretary of State, in the list of exclusively Federal subjects in the White Paper, is it meant that power is given to the Federal Government over policy legislation and administration?—Which items have you got in mind—the whole list?

13,188. The whole list. What exactly is the competence of the Federal Government? Would it extend to policy and legislation as well as administration in every subject from Nos. 1 to 48?—Generally speaking, the answer is, Yes, subject, of course, to what we have generally accepted as likely to happen in the case of the States; that is to say, the application of a particular piece of administration to the conditions of the States set out in the Instrument of Accession. Otherwise, the answer is generally, Yes.

13,189. So, generally, the Federal Government would be empowered to send its own officers for administering Federal subjects in Indian States unless and until there is an agreement to the contrary?—That is so.

13,190. That is slightly different from the compromise arrangement which was arrived at by the Federal Structure Committee of 1930, where the function of the Federal Government was differentiated with reference to policy on some subjects, and with reference to administration on other subjects?—I think what would happen, in practice, would be that these would be the Federal subjects, and then the Instruments of Accession are agreed to between the States and the Crown, and the particular way in which those Federal subjects are applied to the State then becomes a part of the Treaty, but, speaking, generally, these are the Federal subjects for policy and administration.

13,191. And legislation?—And legislation.

*Mr. M. R. Jayaker.*

13,192. May I put a question on that point? Is it intended that in respect of subjects Nos. 1 to 48 it is permissible for any State when it enters into a

Treaty to say that on any of these subjects it will only federate respect of legislation alone, and not in respect of policy and administration?—It might theoretically be possible for a State to make such a claim, but, in actual practice, the Crown would refuse an accession unless the accession was really upon a substantial basis.

*Dr. Shafa'at Ahmad Khan.*

13,193. What I feel is that the arrangement arrived at in 1930 was clear. It differentiated with reference to each particular subject the function of the Federal Government, and they were in a position to know whether a particular Federal law applied to all the States with regard to policy only, or with regard to legislation?—I think we found when we considered this question in greater detail last year (Dr. Shafa'at will remember we had a Committee on the subject) that the expression "for legislation or for administration" did not really carry us very far, and that is the reason it has dropped out, but if Dr. Shafa'at would like to go into this question in greater detail perhaps we might go into greater detail of it in the Committee which was suggested this morning.

13,194. I do not want to cover ground which has been covered previously regarding the question of concurrent legislation, but am I right in assuming that, according to the present Government of India Act, 1919, the Legislative Assembly can pass any law, and can thus override all the Provincial Legislatures in every subject?—That is so. Dr. Shafa'at will remember that the previous assent of the Governor-General is required.

13,195. Yes. In 1930, 1931 and 1932 we discussed and arrived at certain conclusions regarding the distribution of subjects between Provinces and the Federal Government?—Yes.

13,196. And that had the consent and agreement of some very important parties, and very important and influential organisations represented, through the Delegates in India?—Yes.

13,197. Consequently, this is a factor which must be taken into account in considering the proposals which are embodied in the White Paper?—Yes, certainly.

13,198. I do not say that it is the only factor. Of course, I do not regard these agreements as settled, nor do I think that they cannot be altered, but I do think that the compromise embodied in Proposal 125 (the two paragraphs) did represent a measure of agreement between people who were very keen on the maximum amount of provincial autonomy for the Provinces. Then there was the question of sanction. Am I right in saying that in many cases it is much better to get what is called moral sanction by consultation with the Provinces rather than trust any particular law?—That has always been my view. It is much the better course. I think every Federation everywhere in the world has found the great difficulty of applying sanctions when sanctions have been thought to be necessary. It is both a political question and a practical question. Politically it is much better to have agreement. Practically it is very difficult to find a suitable sanction.

13,199. And this is the experience also of Australia, that the Prime Minister's Conference has been able to achieve much more than any law that has been passed concerning the relation between the Provinces and the Centre. I would like to deal with another point which has not been touched so far. I do not know what the procedure regarding the surrender of Sovereignty is going to be, but, I take it, it will take the following form: The States will surrender sovereignty concerning their Federal subjects, and place it at the disposal of the Crown, and the Crown, I take it, will then place it at the disposal of the Federation. Will it be possible for the States later on to resume their sovereignty?—No; a bargain is then entered into—something in the nature of a treaty is entered into. Obviously that treaty could not be unilateral, neither on the side of the Crown, nor on the side of the Estates. It is a bilateral agreement.

13,200. When the Crown has placed the powers acquired from the Indian States at the disposal of the Federation then, of course, the Crown cannot return it to the Indian States. It is a part of the Federation?—It is a part of the Federation.

13,201. And they cannot demand to resume it later on?—No.

13,202. Connected with this question is the question of certain rights which had been given by the Indian States as a result of negotiations with the Government of India; for instance, jurisdiction over the Indian railways. They gave up those rights through a series of Treaties I take it when the Federation is brought into being there will be no claim on the part of any unit for the retrocession of that jurisdiction?—One cannot make a general answer to a question of that kind. It must depend upon the Instrument of Accession. Our desire is that the accession should be as full and as wide as possible within the Federal field. Exactly what will happen in individual treaties one cannot predict. What one can say quite definitely is that the Crown would refuse the accession of a State if it felt that the State was really not undertaking a sufficiency of Federal obligations.

Sir Akbar Hydari.

13,203. May I ask a question? With reference to Dr. Shafa'at Ahmad Khan's question, the jurisdiction over certain railways has been made over to the Crown. The question is with regard to the transfer of that jurisdiction to the Federal Government, and, therefore, by the jurisdiction having been merely ceded by the State to the Crown it does not necessarily lead to a demand on the part of the Federal Government for that transfer to be effected *ipso facto*, by the Crown to the Federal Government without the consent of the State. Is not that so?—I think it is so, but it is a technical legal question. As far as I understood it, I think it is so.

13,204. I thought Dr. Shafa'at meant that the Crown cannot retrocede jurisdiction to an Indian State simply because a State has transferred jurisdiction to the Crown, and therefore that when the Crown has transferred railways under its jurisdiction to the Federation those also should *ipso facto* go?—I would like just to look into that question. Sir Akbar is almost always right in his Constitutional comments, but I would like to look into it before I said 'Yes' or 'No.'

13,205. We are very particular about this, Secretary of State. We have transferred a thing to you, to the Crown, but it does not necessarily follow that we have *ipso facto* transferred that to any other agency that the Crown may choose?—Yes.

Sir Manubhai Mehta.] That will be governed by the Treaties of Accession.

Mr. M. R. Jayaker.

13,206. May I direct attention to the provisions of paragraph 132 : “existing powers of the Secretary of State in Council in relation to property allocated under the preceding paragraph and in relation to the acquisition of property and the making of contracts for purposes of government which are not outside the Federal and Provincial spheres will be transferred to and become powers of the Governor-General of the Federation and Governors of the Provinces respectively.” Therefore all existing rights that the Secretary of State or the Crown possess will under the provision of paragraph 132 be transferred to the Federal Government?—I think paragraph 132 does raise another series of issues. I think the questions that were addressed to me just now, were mainly questions connected with paramountcy.

Dr. Safa'at Ahmad Khan.

13,207. This is a very important point. Last year a Committee of Representatives of the Indian States made a claim for the retrocession of jurisdiction over the Indian railways, and if that claim is admitted I do not know how the Federation itself is going to deal with it?—Dr. Safa'at can rest assured that there is no intention whatever of forming a Government that you call an All-India Federation in which British India and the States nominally enter but in which one party, whichever it may be, does not undertake a sufficiency of Federal obligations.

Mr. Morgan Jones.

13,208. Might I bring Sir Samuel Hoare's mind back again to the answers that were given to Mr. Joshi? Sir Samuel has agreed, I think, that the question as to the right of a Province to veto the application of legislation carried by the Central Legislature within its own

territory is one of the very greatest possible importance, because it is true, is it not, that one Province may object to one type of legislation and another Province may object to an entirely different piece of legislation?—There is no question of a veto, and Mr. Morgan Jones no doubt will remember that my answers were dealing only with the concurrent field.

13,209. Yes, I know. There are 23 subjects in the concurrent field, are there not?—Yes.

13,210. It is possible that one Province may object, say, to the application of legislation carried by the Central Legislature in respect, shall we say, of No. 6; another may object to No. 7; another may object to the whole lot from 13 to 18, dealing with labour legislation, and consequently it becomes of prime importance that some sort of authority may be provided to the Central Legislature whereby that may be overcome where a Province objects?—I do not want to put myself into the position of appearing to argue against uniformity of administration in this scheme. The difficulty is to find a sanction without striking at the roots of Provincial autonomy. The difficult cases and these are probably the cases that are in Mr. Morgan Jones' mind, are cases connected with labour legislation.

13,211. Yes. May I put a question apropos of that particular point now? The Secretary of State will remember that on page 93 we have set out for us the composition of the Provincial Assembly, Madras, for instance. In Madras, there is provided a place for six special seats out of 215?—Yes.

13,212. In Bombay, seven out of 175; in Bengal, eight out of 250; and in the United Provinces, three out of 228. Therefore, it is quite clear, is it not, that the voice of labour in an area in Provinces such as those will be comparatively weak in point of numbers, anyhow?—Mr. Morgan Jones will remember that those are only the special seats. With a fairly wide franchise labour has a great deal of influence in the other seats.

13,213. I accept that point though I may not perhaps attach undue importance to the weight of it?—Under our present proposals I think agricultural

labour is something like three-fourths of the voting power.

13,214. That is quite true, Sir Samuel; I will not press an argument on that point at all; but the point really is this: In an area such as this where labour in respect of special representation is represented in a diminutive kind of way, is it not clear that there will be less chance for labour to express its mind if the Provincial Government tends to take an antagonistic attitude in respect of labour legislation?—Yes. It is open to question though which Government is likely to be the more sympathetic towards labour, the Federal Government or the Provincial Government. I think it is difficult to dogmatise that one Government will be more favourable than the other, but I admit this difficulty with labour legislation.

13,215. May I put another proposition to Sir Samuel? Suppose an International Labour Convention were arrived at at Geneva, and the Indian Representation at that Convention agreed to ratify it so far as the Central Province was concerned, what would be the position of the Central Body which had formally accepted the proposition of ratification if a Provincial Government has the right to contract out of it?—The Provincial Government has not the right to contract out of it. An International Obligation is included in the Federal field. The Provincial Government would have no right to contract out of it. The trouble arises, though, and it is a trouble that has arisen with the Dominion of Canada, what sanction can you apply to a part of the Federation that refuses to put the Treaty into force?

13,216. But, Sir Samuel, am I not right that even though the Central Government may have agreed to ratify the Convention, the Convention, in fact and in practice, would not be carried out without the carrying of a Bill by the Central Legislature?—Yes; and I assume that the Central Legislature would carry a Bill of that kind.

13,217. Certainly. I think so too; but, when the Bill has become an Act, by the action of the Central Legislature, as I understand it, you have already admitted that the Provincial Government would still have the right not to carry that into operation within its own

territory?—No, not at all. If I gave that impression I expressed myself very badly. The Provincial Government would have no such right.

13,218. I put that too strongly, I admit. The effect, rather, would be this, that while the Central Legislature would have the right to carry an Act of Parliament to ratify the Convention, it would be possible for the Provincial Government to refuse to carry it out and in the view of Sir Samuel there is no machinery to compel them to do so?—It is so; there is no machinery under our present Proposals. Directions, of course, would be issued to the Provincial Government and the Provincial Government would be breaking one of the obligations of the Federation; but, when it comes to taking action, I fail to see what action can be taken.

*Sir Austen Chamberlain.*

13,219. You say in such a case it would be a matter of foreign relations?—It would be a matter of foreign relations.

13,220. Are they not a reserved subject of the Governor-General?—Yes, they are.

13,221. Then would not 70 (g) to which I called attention apply in that particular case, or would it not?—I think that is so, and I think the clearer cases could certainly be dealt with under the special responsibility of the Governor-General. The trouble arises in a case that is not very clear-cut, and it is a question whether the Treaty is actually being carried out or not in a particular part of the ratifying territory.

*Mr. N. M. Joshi.*

13,222. May I draw attention to the wording of Item 8 on page 114. "External affairs, including international obligations subject to previous concurrence of the units as regards non-Federal subjects." The Federal Government possesses power over external affairs on Federal subjects. Now the question is whether the concurrent subjects are to be considered non-Federal or Federal?—I think I must look into this point again. I think here it would be carrying our proposals too far to say that a single Province might veto the ratification of an agreement that the rest of India wanted. I will look into the point again.

13,223. The wording should be as regards purely provincial subjects?—I would like to look into it again.

*Sir Austen Chamberlain.*

13,224. I should be very glad if you would Secretary of State, because I think in answer to me two days ago, you told me that the ratification by the Central Government in matters which were in the concurrent field would have to be subject to the consent of the units. I so understood the answer to that effect?—I think I was then dealing not so much with ratification as legislation; but, anyhow, whether I was or whether I was not, I will look into the point again in view of this discussion.

*Mr. Morgan Jones.*

13,225. Might I follow the point a little further, Sir Samuel? It is to be assumed, is it not, that when the Governor-General attaches his signature to a Bill carried by the Central Legislatures, he thereby attaches authority, as it were on behalf of His Majesty the King to the Bill as such. It becomes an Act of Parliament?—Yes.

13,226. It is also to be assumed, I take it, that the act of the Governor-General in attaching his signature, makes that Act also an authority for the Governor of a Province?—Yes, and to the Province and also to the Courts of Law.

13,227. Now may I ask: Supposing that the Governor of a Province were called upon by the Governor-General to see to the application of an Act of Parliament within the territory of that Province, what machinery would that Governor have at his disposal to carry it through?—I am not quite sure whether Mr. Morgan Jones means a general authority. In the field of the Governor's special responsibilities, his course is clear. His order is valid; it has to be accepted by whatever is the appropriate machinery in the Province.

13,228. That is not my difficulty, Sir Samuel—it is the practical application of it. I can quite see that the authority of the Governor-General would go automatically to the Governor, and the Governor says: "I want to apply this Act of Parliament in this area; follow my instructions". But the Governor of

the area (if I may use the expression) is on strike. Now what machinery has the Governor to apply this Act in the various districts of his Province?—In the field of the special responsibilities, that is the only valid order in the Province. Every official, therefore, has to obey his order, and it goes through the whole machinery of the command in the Province, and that is the only valid order. Outside the field of his special responsibilities, he has no such power.

13,229. So that if the Central Legislature carried a Bill dealing, shall we say, with a piece of labour legislation, and the Governor of the Province were called upon by the Governor-General to apply the Act, he is perfectly helpless?—That is the position now. Mr. Morgan Jones suggested that in a case of this kind, the Governor-General or the Governor should go outside the field of his special responsibilities. That will carry us a very long way; I think further that probably many of us would wish to go. It would strike really at the whole root of responsible Government.

13,230. Per contra, if a Province is entitled to contract out of an Act of Parliament, it is striking at the root of Federal authority?—I think that is so. The trouble comes when it is a question of voting money. But I should be glad if Members of the Committee and the Delegates would think over this very difficult question of labour legislation; it is a very difficult question; keeping in mind the two dangers to avoid, namely, the danger of the uniformity of legislation being broken up and the danger on the other hand of undermining the whole basis of responsible government, both at the Federal Centre and in the Provinces.

*Sir Austen Chamberlain.*

13,231. Labour is one of the concurrent subjects, is it not, Secretary of State?—Yes.

13,232. And, as I understand it, Mr. Morgan Jones is putting to you this case, that a law dealing with the conditions of labour is passed by the Federal Legislature and assented to by the Governor-General; that the Governor-General then finds it desirable or necessary to issue instructions to the Governor of a Province to execute that law. Your

answers have proceeded upon the basis that the Governor-General had so issued instructions to the Governor: is not that so? That was the hypothesis put to you?—I was dealing generally with the question whether outside the field of special responsibilities, either the Governor-General, or the Governor, would be able to act at all.

13,233. That is a different thing. Do not let us speak for the moment of the field of special responsibilities. I understood Mr. Morgan Jones to have taken as an illustration labour legislation, which is a matter of concurrent legislation in the Concurrent List?—Yes.

13,234. And the basis of his further questions to you was, what is the Governor to do if he has instructions from the Governor-General to execute this Federal Law passed in the concurrent field and his provincial Government refuse to do it. I want to ask you whether, in view of the answers which you gave to me yesterday and of the meaning which you attach to paragraph 125, the Governor-General could issue any such instructions?—I think that is generally the case—the case as I stated it yesterday. I was thinking of the case of the border line case of international obligations; but apart from that, my answer is as I gave it to Sir Austen yesterday.

13,235. Then, unless the Governor-General acts in pursuance of his special responsibility in regard to foreign relations, he could give no such instructions to the Governor of a Province?—That is so.

*Mr. Morgan Jones.*

13,236. But even supposing the Governor-General could not in fact formally issue instructions, my question of difficulty still remains. What can the Governor do in a Province to implement the Bill of the Central Legislature?—My answer is this, Mr. Morgan Jones: The Governor has no power except in the field of his special responsibilities.

*Chairman.*

13,237. Secretary of State, I am sure the Committee would desire to meet your convenience. Would you like us to go now for 20 minutes to paragraphs 130 to

135, or would you sooner adjourn? You have had a very heavy morning?—I would suggest, my Lord Chairman, that it might be a good thing to begin upon those paragraphs for this reason: they look very technical and very formidable, but it may be that, after a short discussion, we shall find that there is not a great deal that arises upon them. I could anyhow make an introductory observation or two about them, and you could then judge whether it was a good thing to begin the examination or not.

*Marquess of Salisbury.*

13,238. May I say in order to shorten matters, that I have looked through these matters very carefully, and as far as I am concerned, there are no questions to ask. The careful scrutiny of my colleagues may have found something, but my impression is that they are nearly all consequential on the rest of the document?—Lord Salisbury is quite right. They are purely consequential and they are really applying to the new conditions the conditions that were, generally speaking, included in the Government of India Act, and I think, if I might just give a short explanation, the Committee will see that that is so. The necessity for provisions on the lines of these proposals arises from the fact that under the existing Government of India Act the Secretary of State in Council can alone sue and be sued in respect of any rights or obligations arising in connection with the Government of India. Thus all the numerous suits to which Government is a party in India are necessarily brought in form by or against the Secretary of State in Council as the case may be. With the institution of provincial autonomy and the legal delimitation of the power and authority of the Provincial Governments of the future and of the Federal Government accompanied by the disappearance of the Secretary of State in Council as a corporation with sole final authority over all Indian expenditure, it becomes necessary that the rights and obligations of Government in India should be apportioned between the Federal and Provincial Governments respectively, which will consequently have to be created juristic persons for the purpose of suing and being sued. At the same time, it

will obviously be necessary that these changes should not affect the existing rights as against the Secretary of State in Council to a greater extent than is involved in the necessary consequence that they now become rights as against the Secretary of State. These paragraphs are, in short, a translation into terms appropriate to the White Paper scheme of the provisions of Sections 28, 29, 30, 31 and 32 of the existing Government of India Act.

Marquess of Salisbury.] I have nothing more to say, as far as I am concerned.

Sir Austen Chamberlain.] I have no questions.

Sir Reginald Craddock.

13,239. There is just one question I wanted to put, if I might, and that is as regards claims by pensioners of the Services. Hitherto, I understand (it is only a theoretical thing, though it might possibly arise) that the pensioner has a power of suing the Secretary of State here in London for the alleged non-payment of his pension. Under the arrangements to be made, will such a pensioner, if he had to resort to law, be under the necessity of suing in the courts in India, or does the Secretary of State assume responsibility?—The right would remain intact and it might be necessary to define it to make it quite clear that the right would remain to sue here if he wished, or in India. It is the intention to leave the right intact.

Sir Hubert Carr.

13,240. There is one point I would like to ask the Secretary of State about. It is in regard to commercial leases. As I understand it, future commercial leases will be with the Governor-General or the Governor, but that existing commercial leases will be transferred from the Secretary of State in Council to the Secretary of State, not to the Governor-General and Governors?—Yes, that is so.

Sir Hubert Carr.] Thank you; that makes it clear to me.

Mr. M. R. Jayaker.

13,241. May I ask one or two questions on paragraph 131. I suppose that

refers to all property in India wherever situated. It would include property within the territory of the Indian States also?—Yes, it includes any property, except the property that is held under paramountcy.

13,242. And it includes under Proposal 132, outside paramountcy again, all existing property rights, acquisitions, etc., within the territory of the States, outside paramountcy. I know the special case of paramountcy; I am not touching that at the present moment?—Yes, if it is property of the Crown.

13,243. I am only asking, because an argument has been made that the States may have ceded certain rights and certain property to the Crown, but that does not necessarily pass to the Federal Government as the successor of the Crown. That is why I am asking this question?—Mr. Jayaker is referring here definitely to property?

13,244. Yes?—Not to jurisdiction, which is another thing?

13,245. I am not speaking of rights, which come under paramountcy?—No, but I made the distinction to be quite clear what was the question. If Mr. Jayaker is dealing with property, my answer is Yes.

Mr. M. R. Jayaker.] Property includes, unfortunately, in law, all rights.

Sir Hari Singh Gour.] No, not all rights.

Mr. M. R. Jayaker.

13,246. Which are vested in a party?—That raises surely another issue. This clause here does deal only with property.

Mr. M. R. Jayaker.] Then the existing powers of the Secretary of State will include, will they not, all intangible rights which amount to powers, outside paramountcy?

Sir Manubhai N. Mehta.

13,247. In relation to property?—You see here "powers in relation to property."

Mr. M. R. Jayaker.] I am asking about such powers. I am keeping outside paramountcy altogether. I am keeping to the Federal field.



*Sir Austen Chamberlain.*

13,248. Does not this question really touch the same matters as were put to your earlier, in connection with the other clauses, in which you said you would like to look further into it?—I think this is quite clear. It is property within the meanings of these sections here, Section 130 up to 135, but I do not want to have any misunderstanding. It does not go farther than that.

13,249. I thought Mr. Jayaker said he was putting his question in relation to questions which had been put earlier in the day?—Yes.

13,250. I thought what he wanted to get an answer from you about was the railways which had been transferred?—Yes.

13,251. The answer which you have just given I understand is not intended to refer to the transferred administration of the railways?—No, it simply covers property which is within these clauses here.

*Mr. M. R. Jayaker.*

13,252. Supposing the railway was transferred with the result that the land covered by the railway line has become the property of the Crown, will it not pass under No. 131?—The jurisdiction, surely, brings in paramountcy.

13,253. I am not speaking of the jurisdiction; I am speaking of the actual ownership of the land?—Yes—the ownership of the land. Is there any question about the ownership of the land because the ownership of the land is the State's ownership.

*Dr. B. R. Ambedkar.*] It was given to the Federation.

*Mr. M. R. Jayaker.*

13,254. It is the property of the Crown at the present moment?—You mean land that is ceded?

*Mr. M. R. Jayaker.*] Yes.

*Sir Akbar Hydari.*] I may say that, as a matter of fact, up to very recent years, the land on which the railways are built has never been paid for.

*Mr. M. R. Jayaker.*] Then the question does not arise and it does not fall under Proposal 131.

*Sir Akbar Hydari.*] Therefore that is not the property of the Crown. It would be the land of the State.

*Mr. M. R. Jayaker.*] I am speaking of those cases where at present the land is the property of the Crown; does not that pass to the Federal Government?

*Mr. Zafrulla Khan.*] With reference to *Sir Akbar Hydari's* remark, the land may not have been paid for, but in many cases of which I know land has been handed over without payment to the Crown and belongs to the Crown, so his remark that it has not been paid for does not conclude the matter.

*Sir Manubhai N. Mehta.*

13,255. I do not think it belongs to the Crown. The Crown at one time used to make agricultural profit out of it. Now the Government of India say they have no intention of doing so?—Apart from these wide issues, the answer is a simple one. Where the property is the property of the Crown it is transferred. Where it is not, it is not transferred.

*Mr. M. R. Jayaker.*

13,256. That is all I want. That is irrespective of whether the property is in the territory of the Indian States, or is in British India?—Yes.

*Sir Hari Singh Gour.*

13,257. And by "property" you mean not only tangible rights and property, but also intangible rights and property?—I should like to see that question a little bit more concrete, not being a lawyer. What is in *Sir Hari Singh Gour's* mind?

13,258. The property may be tangible rights in property like immovable property, land, and so on, and rights in property would be property in the legal concept, though it is not visible and tangible?—I do not like to give a legal opinion upon a question of that kind.

13,259. May I put it differently?—Yes.

13,260. The word "property" is here used in the larger sense as including all that is, in the legal concept, property?—Yes.

13,261. That is right?—In the concept of property as used in the Government of India Act.

13,262. And defined in the General Clauses Act ?—(Sir *Malcolm Hailey*.) It is a translation of the sections to the circumstances of the appropriate sections, 28 and 32, etc., and you will find it will have no larger implication than those sections of the Government of India Act. (Sir *Samuel Hoare*.) And here let me say again, to make it quite clear, that this is property outside the field of paramountty.

Mr. Y. *Thombare*.

13,263. As regards the allocation, for instance, of the railway property between the Federal and Provincial Governments, as Sir Akbar Hydari has just said, there has been land which has not been paid for, so that the contribution to the railway property so far has come, we may say (it may be very little) from the States, and the present Government, so in that case will there be an allocation of that property between the Federal and Provincial Governments and the Governments of the States concerned ?—I would make the same answer to Mr. Thombare that I made to Mr. Jayaker. If there is Crown property (it is a question of fact) outside the field of paramountty, then it does come within the provisions of this clause. It is a question of fact.

13,264. But, if it is a question of property within the jurisdiction of paramountty—?—Then it does not come within this clause at all.

13,265. Would it be considered. Would it be gone into ; that is all ?—I think it must be gone into.

Sir Akbar *Hydari*.

13,266. I want to ask with reference to paragraph 134 ; you have got "including existing immunities from Indian Income Tax in respect of interest on sterling loans issued or guaranteed by the Secretary of State." Is there any reason why sterling loans have been specified to the exclusion of rupee loans ?—It is dealing with existing contracts and existing immunities.

13,267. But there are immunities with regard also to rupee loans ?—I will look into the point raised by Sir Akbar.

Mr. M. R. *Jayaker*.

13,268. There are War loans which are free from income tax ?—I had better look into Sir Akbar's point. I will give him an answer when I have consulted my financial advisers. The desire under paragraph 134 is that all existing contracts should remain intact, and if paragraph 134 does not carry out that intention we will alter the drafting.

Sir Akbar *Hydari*.

13,269. You are aware of the exemption from income tax of Indian Princes with regard to a lot of loans which have been issued with regard to which there is a special form for Indian Princes, and we do not want that that exemption should at a subsequent period be called into question ?—We will look into it, but our intention is that all existing contracts should be safeguarded.

13,270. A question of drafting : "on all the revenues of India, whether Federal or provincial"—we should have liked it to have been said "on all the Federal or Provincial revenues." We are not quite sure whether "Federal" includes us or not.

Major *Cadogan*.

13,271. On paragraph 131, I would like to ask the Secretary of State how far, if at all, one class of property vested in His Majesty for the Government of India is affected by the allocation, namely what, for want of a better phrase, I may call Military property, barracks, and so on. That apparently is not outside the Federal and Provincial sphere, or are such properties outside the Federal and Provincial sphere ?—Do you mean both in British India and in the Indian States ?

13,272. Yes ?—It would fall, I suppose, in British India into the Federal sphere, and, being in the Federal sphere, it would be transferred always remembering that Defence is a Reserved subject. In the case of the Indian States I suppose there it would be a question of fact whether the land had been taken up under paramountty, or whether it had not. In a case where it had not, it would be transferred ; in the case where it had, it would not.

Sir Akbar Hydari.

Major Cadogan.

13,273. In the case of Defence it would remain reserved?—In the case of Defence it would remain reserved, but, technically, it would be within the Federal field.

13,274. You say property outside the Federal field would not be affected by this allocation. Therefore, I take it for granted that that which is inside will be affected?—Yes.

*(The Witnesses are directed to withdraw.)*

Ordered: That this Committee be adjourned to Tuesday next at 10.30 a. m.

17th October 1933.

PRESENT :

Lord Archbishop of Canterbury.  
Lord Chaneellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Middleton.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.

Lord Hutehison of Montrose.  
Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Coeks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.  
Earl Winterton.

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The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Lieut.-Colonel Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.  
Mr. N. M. Joshi.

Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] The Secretary of State will give evidence this morning on paragraphs 106 to 109 of the White Paper, which paragraphs deal with Excluded Areas.

*Mr. F. S. Coeks.*] My Lord Chairman, on a point of order may I make a suggestion? This question was discussed yesterday at Sub-Committee D. We have not had an opportunity of seeing

the record of that Committee and of the evidence then given. Would it be of assistance to the Committee if the Secretary of State's examination this morning were postponed a little until we could see the evidence given before the Sub-Committee?

*Chairman.*] I am in the hands of the Committee in that matter.

*Witness (Sir Samuel Hoare).*] My Lord Chairman, I hope very much that you will not postpone this investigation this morning. I think the Committee should realise that it does place a very heavy burden upon me to get up a particular body of evidence. I must assume that the arrangements will so far as possible be followed. I would have thought, subject to what the Members of the Sub-Committee think, that it would have greatly helped them to have had this examination so shortly after hearing the evidence upon the subject.

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*Chairman.*

13,275. Secretary of State, I take it also that you would be willing to deal in discussion with any points which emerge, partly as a result of the examination to-day and partly as a result of the examination of the witnesses by the Sub-Committee yesterday?—Certainly.

Marquess of Salisbury.

13,276. Perhaps the Secretary of State would allow me to ask him this. First of all, would he let the Committee know what the White Paper means by a "Partially Excluded Area." Of course, it is evident to some extent, but perhaps he might add to that?—Yes, my Lord Chairman. At present there is more than one type of excluded area under the Government of India arrangements, the types depending, roughly speaking, upon the standard of civilisation in the particular area. Lord Salisbury will find a detailed description of the backward areas on page 156 of Volume I of the Statutory Commission Report. He will there find set out in some detail the distinctions between one kind of area and another. We now propose to have two classes of area for these backward districts, namely, an area that would be entirely excluded

from the Provincial administration and an area that would not be entirely excluded, but would be subject to the Governor's decision, as to how far the Provincial administration should run in that area.

13,277. The Committee has, of course, read in Proposal 70 (f) on page 55 of the White Paper—that is the special responsibility proposal—that: "the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas." That would only be, as it were, a recital of what is subsequently going to be done in what we are going to discuss this morning, I suppose. There is nothing beyond what is repeated in the paragraphs now under examination in 70 (f): it is a cross-reference, as it were?—No, it is more than that. Paragraphs 106 to 109 go further than Paragraph 70 (f). 70 (f) deals with the partially excluded areas giving the Governor special responsibility in the partially excluded areas. These paragraphs deal also with the totally excluded areas in which the whole administration is the Governor's administration.

13,278. I am much obliged. I meant, of course, that paragraph 70 was really a cross-reference to the partially excluded areas recited in the paragraphs that we are now discussing?—Yes, and there is the further point that Lord Salisbury should keep in mind, namely, that paragraphs 106 to 109 deal also with the special safeguards over legislation in the partially excluded areas.

13,279. Yes. Then, still keeping in mind the relation between paragraph 70 (f) and these paragraphs, would the Secretary of State say how far these paragraphs react upon the North West Frontier Province? He will remember that there are special provisions in Paragraph 70 as to the North-West Frontier Province. Would part of the North-West Frontier Province be a partially excluded area or all of it?—No, it would not. The North-West Frontier area, as Lord Salisbury knows, is divided into two parts. There is the administered part and there are the tribal areas. The tribal areas are outside Indian administration altogether.

13,280. Completely excluded ?—Completely excluded. The Province itself is administered just like any other Province, with one or two specific changes due to military reasons.

13,281. Therefore, the North-West Frontier Province would not come into question as a partially excluded area at all ?—No.

13,282. Then in regard to these excluded areas and partially excluded areas there must necessarily be a special staff associated with the Governor in whatever case it may be. He must have a special staff to administer them, I suppose ?—In the excluded areas, certainly. In the partially excluded areas, so far as the Provincial administration does not cover the whole field.

13,283. It is a question of degree in the partially excluded areas ?—It is a question of degree.

13,284. The Secretary of State will know that several of us have been in these discussions very uneasy as to where the staff is to be drawn from for these purposes. We anticipate, of course, that under the new state of things, if it comes into being, there will be a great diminution in the European employees of the Government of India and the Provinces, and we wonder where all the staff is to be raised from which is to take charge, let us say, of the excluded areas, or, to some extent, of the partially excluded areas ?—The staff will be just what it is now. These Services will not be special services for the excluded areas. The personnel will be drawn from this or that of the existing services.

13,285. But the staff will have to be fairly extensive, will it not ?—No, I do not think so. I do not see why it should be any more extensive than it is now.

13,286. But there will not be the same scope as there is now ?—For instance, if I might give a concrete case, take the case of the totally excluded area, namely, the Assam area : that is the really only totally excluded area that we propose. I would imagine that so far as numbers go, even there the personnel of the staff is a comparatively small one. I do not know whether Sir Malcolm could give me some details about it. (Sir *Malcolm Hailey*.) I think it is actually four or five officers. (Sir *Samuel Hoare*.) Sir Malcolm says it

would be four or five senior officers in all the Assam Districts. (Sir *Malcolm Hailey*.) Superior officers. (Sir *Samuel Hoare*.) Who would, of course, presumably be Secretary of State servants and recruited just as they are now.

13,287. Will Assam be a partially excluded area ?—No ; the Assam tracts are totally excluded.

13,288. And in the same way, the tribal area on the North-West Frontier is totally excluded ?—The tribal area is outside Indian administration altogether, and therefore it does not come into these proposals at all.

13,289. That is controlled by the Viceroy himself ?—Yes, it is controlled by the Governor acting as agent for the Viceroy, as far as you can accurately use the term "control."

Marquess of Reading.

13,290. May I ask a question ? I am not quite sure that I caught the answer that the Secretary of State gave. Did you say, Secretary of State, that the only totally excluded area that would come under this discussion would be that of Assam ?—That is our proposal.

Marquess of Zetland.

13,291. Secretary of State, I am not quite clear with whom would the officers who are in charge of the excluded areas correspond ?—In the case of the totally excluded areas with the Governor.

13,292. Direct with the Governor ?—Certainly. In the case of the partially excluded area with the Governor so far as they are not working under the Provincial Government.

13,293. That is to say, with the Governor's personal secretariat ?—Yes, that would be so.

Marquess of Salisbury.

13,294. Then, may I take the Secretary of State to the paragraph he referred to just now—paragraph 108—which deals with legislation ? *Prima facie*, I gather that no Act of either Legislature, that is to say, the Central Legislature, or the Provincial Legislature, will apply to the partially excluded areas, but by leave of the Governor they may ?—Yes, that is so.

13,295. But they may. That is the point, is not it?—Yes.

13,296. With or without amendment. When the Viceroy gives leave he may say: "Subject to such amendments" ?—Yes.

13,297. He has complete control in that way?—Yes.

13,298. Now, in those circumstances as we have to contemplate the case when legislation may apply to them, would the Secretary of State kindly look at paragraph 109 where he will see, I think, that there is a drafting point which has got to be borne in mind?—I only call attention to it because it leads to something else. It reads like this: "Rules made by the Governor in connection with legislative procedure will contain a provision prohibiting the discussion"—as it reads literally, he must prevent all discussion. That is clearly inconsistent with what we have just been saying in No. 108, that in certain circumstances the legislation may apply. It should be "may," not "will"?—I think Lord Salisbury is not drawing a distinction between the totally excluded areas and the partially excluded areas.

13,299. I am speaking of the partially excluded areas?—In the case of the totally excluded areas discussion is barred. In the case of the partially excluded areas discussion can be allowed under the provisions of paragraph 109.

13,300. So it only applies to the Excluded Areas, but then there is a sentence at the end: "enabling the Governor, at his discretion, to disallow any resolution or question regarding the administration of a Partially Excluded Area"?—Yes.

13,301. So I understand (I think—that is a complete answer) that it will be in his power to allow it in the Partially Excluded Areas?—Yes, for this reason, that in the Partially Excluded Areas the administration will be to some extent under the Provincial Government, and it therefore seemed to us justifiable to draw a distinction between a discussion raising questions of the Provincial administration and a discussion for which only the Governor himself was responsible.

Marquess of Salisbury.] I am much obliged. The Secretary of State has entirely disposed of that drafting point.

Archbishop of Canterbury.

13,302. May I just ask a supplementary question upon that? Is it meant by paragraph 109 that the Governor is totally prohibited from allowing any question to be asked in the Provincial Legislature on a matter affecting an Excluded Area, or is it only giving him power at his discretion to prohibit?—In the case of a Totally Excluded Area discussion is barred. In the case of a Partially Excluded Area discussion is admissible.

13,303. So that not even any question could be asked in the Provincial Legislature on a matter which would affect an Excluded Area. I can imagine cases arising where the question would be very natural?—That is our present intention. It has been urged upon us that discussions may be very dangerous in their reactions upon some of these very wild districts. I gather that the experts who gave evidence last night at the Subcommittee very much emphasised that reason, and it is because of that that we are nervous of discussions about the affairs in a Totally Excluded Area. After all, there is only one Totally Excluded Area in the whole of India, namely, the hill tracts of Assam.

13,304. But, of course, the Governor would have perfect power to say, "This is a question which it is not expedient to ask," and then it is ruled out; but this would prohibit him in any sense from allowing a question even if it was a natural and inoffensive one?—Yes. It is one of those difficult questions where a good argument could be made on both sides. I think I might say in reply to His Grace that you do not want to create grievances of people wishing to ask a question and every time the Governor having to tell the questioner that he cannot ask it. But it is one of those difficult questions, I quite admit. We have been very much influenced by the opinion of the men who have actually been administering these Backward Districts, and they lay great stress upon the danger of questions and of discussions reacting upon these more or less uncivilised tracts.

Mr. M. R. Jayaker.

13,305. Then under paragraph 109, as you stated, Secretary of State, it is not

permissible to the Governor to make a rule, making it depend upon his discretion to allow discussion or asking questions?—Not for a Totally Excluded Area. For a Partially Excluded Area, yes.

13,306. I am speaking of a Totally Excluded Area?—No, under paragraph 109 it is not.

*Marquess of Salisbury.*

13,307. At any rate we are quite clear that in a Partially Excluded Area there may be discussion in respect of the Partially Excluded Area?—Yes, with the Governor's approval.

13,308. If the Governor permits it?—Yes.

13,309. By that the Secretary of State, of course, means that in respect of those areas his Ministers will have the right to approach him on a subject and advise him upon it?—Yes. He could act at his discretion.

13,310. They will, therefore, have access to him on all these subjects?—Yes.

*Marquess of Reading.]* May I ask one question on that?

*Marquess of Salisbury.]* If you please.

*Marquess of Reading.*

13,311. As I understand the language of paragraph 109, Secretary of State, the Governor only intervenes if he wishes to disallow; it is not a question of his having to give permission. I am dealing only with the Partially Excluded Areas. There is no question there of his having to give permission for a question to be asked. As I read the rule, it means that he has the power to disallow a question or to disallow discussion?—That is so.

13,312. But in the ordinary course, as I read this rule, there will be the right to discuss and the right to ask a question and it will only be when the Governor at his discretion thinks that the question should be disallowed or the discussion prohibited he would then intervene; that is right, is it not? I read it so, because we were discussing it on the basis just now that there could be no discussion unless the Governor allowed it in an Excluded Area. I was pointing out that if I read Rule 109 aright that

is not so. It is the Governor's discretion to disallow?—In the case of partially excluded areas.

13,313. I am only speaking of that?—Yes, that is so.

*Marquess of Salisbury.*

13,314. And if the Ministers may advise, then it also follows that the members of the Legislature themselves may ask to be allowed to discuss it?—Yes.

13,315. And, in point of fact, there will be discussions and ought to be discussions upon the partially excluded areas?—I think there might be. The Provincial Administration, as I say, will be functioning in the area. You could not withdraw that field totally from the discussions of the Provincial Legislature.

*Earl Peel.]* But the discussion I suppose will be only so far as the Provincial Government has authority over the partially excluded areas. It will not apply to that portion of the administration which is restricted to the Government. It will not apply over the two fields.

*Marquess of Salisbury.*

13,316. It will not apply to the excluded areas?—It will not apply to the totally excluded areas but there will not be two kinds of Government in the partially excluded area. There will be the Provincial Government controlled to the extent that the Governor thinks fit.

*Earl Peel.*

13,317. I gather that in the partially excluded areas there was a sort of divided authority, was there not?—No, the administration is the Provincial administration, but subject to these safeguards in the hands of the Governor.

13,318. So there might be no restriction therefore?—No, there might not be.

*Marquess of Salisbury.*

13,319. This question might arise out of what Lord Peel has asked the Secretary of State: Could he give us some idea of in what respect an area would be dealt with as partially excluded? Would it be, say, law and order excluded, or would it be a certain area of subject excluded, or a certain territorial area

excluded?—No, it would not be a territorial area; it would be the exclusion of certain subjects. Let me give Lord Salisbury one or two cases that occur to me. The kind of cases that might make a great deal of trouble in these areas would be cases dealing with the transfer and possession of land. The Governor, probably, would exclude the Provincial legislation or the Provincial type of administration to that extent from the backward tract. Again in the case of the administration of the police; in certain of these areas, I am told that law and order is very effectively maintained by the headmen of the villages. In an administrative case of that kind, I imagine that the Governor would exclude the ordinary police administration from the backward tract.

13,320. But, in respect of all these subjects which are excluded, the Ministers would be in a position to approach the Governor and advise him to make changes?—Yes; in a partially excluded area they would be.

13,321. That would be so. And the members of the Legislature in the same way, unless they were definitely forbidden from discussing it, might press the responsible Government to approach the Governor?—Yes.

13,322. I only want the Committee to have it quite clearly in their minds. Even in the case of partially excluded areas, and even in those parts of the administration which are excluded, there the local legislatures and the local government would still have an opportunity of access and influence. That is what is intended?—Yes, and Lord Salisbury will remember that they do have that access now. In all the partially excluded areas in our scheme there is possible this kind of discussion and influence now. In the partially excluded area, we are really going on very much with what is the present proceeding.

Archbishop of Canterbury.

13,323. Secretary of State, just one question on paragraph 106; "His Majesty will be empowered to direct by Order in Council that any area within a Province is to be an 'Excluded Area' or a 'Partially Excluded Area.'"

Would that mean that the Governor would consult the Provincial Legislature on the matter before he came to this decision, or would he decide entirely, so to say, off his own bat?—The object of paragraph of 106 is really this: I think we intend, subject to what the Committee say, to put in a schedule of these totally excluded areas and of the partially excluded areas in some form in the Constitution Act. The kind of contingency therefore that His Grace contemplates would not arise. It will be in the Constitution Act; but it is necessary to have provisions for making future alterations in the boundaries. We do not contemplate that it will be necessary in the future to bring in new tracts; we rather contemplate that as the standard of living rises in some of these tracts, so it may be possible in the future to bring them more under the general administration, but, apart from that, I think it is necessary to have some power residing in the Governor-General and the Governor to make alterations of a small kind in the actual Frontiers, and nothing more than that is contemplated under paragraph 106; but if the Committee thought fit, I think there is a good deal to be said for having a schedule of these areas actually in the Act. It will then show that the framers of the Act have no intention of withdrawing large tracts of territory from the ordinary administration in India, and it will also show definitely the kind of tracts that we have in mind.

13,324. Any such schedule would be subject to power given in the Act for revoking or altering the schedule?—That is what paragraph 106 does.

13,325. That would be included in the Act?—The form, your Grace, that it would probably take, would be that of an Order in Council; the form which the revocation of any provision, including those relating to backward tracts, would take, would probably be that of an Order in Council.

13,326. But the power to vary the schedule which would be included in the Act would be safeguarded in the Act itself?—As at present proposed, it would rest with the Governor and the Governor-General.



Marquess of Salisbury.

13,327. I think His Grace means that if it was put into the schedule there would be words in the Act giving power to apply paragraph 106 even in the case of a schedule to an Act of Parliament?—Subject to what restrictions Parliament liked to put upon those powers. It might define the power of alteration as the power of altering small details of boundaries, and for any bigger question it might prescribe the procedure of Order in Council here.

Sir Austen Chamberlain.

13,328. Paragraph 106, as I read it, deals entirely with Orders in Council?—Yes.

13,329. "His Majesty will be empowered to direct by Order in Council"?—Yes.

13,330. Or by an Order in Council to vary those orders?—Yes.

13,331. "His Majesty in Council" means His Majesty advised by the Secretary of State?—Yes.

13,332. Then the Secretary of State has once or twice said: "The Governor-General or the Governor"?—Yes.

13,333. "Advised by the Governor-General or the Governor"?—Yes.

13,334. But it is not proposed, is it, that there should be any Orders in Council issued on the advice of the Viceroy? The authority to tender advice to the King would be the Secretary of State?—That is so.

13,335. And, in so far as the Viceroy or the Governor comes into it, it is as an adviser to the Secretary of State?—Yes, at his discretion, that is to say.

Lord Hardinge of Penshurst.

13,336. Should that not be defined?—It would have to be defined in the Act, no doubt.

Marquess of Zetland.

13,337. Secretary of State, paragraph 107, the first two lines, clearly refer to partially excluded areas in which the Governor will be declared to have a special responsibility. The next two lines in the same paragraph appear to deal with wholly excluded areas: is that so?—Yes.

13,338. With regard to the administration in the partially excluded areas, there will be, as I understand it, a system of dual control?—It is control subject to the Governor's supervision. There would not be two administrations. There is one administration applied to the backward tract in the way that the Governor says it should be applied.

13,339. Yes, but I am looking at the question from the point of view of the District Officer?—Yes.

13,340. In the case of a partially excluded area, will the District Officer correspond exclusively with the responsible Government, or will he correspond in respect of certain subjects direct with the Governor to the exclusion of the responsible Government?—He would carry out the Governor's instructions as to how he should correspond. The Governor would be perfectly free to make what rules he thought fit.

13,341. I see. Then the Governor might instruct the District Officers to correspond direct with him in respect of certain subjects of the administration. Is that so?—He might, certainly, if he wished. I imagine what would happen (I do not know what Sir Malcolm would say about this) would be that he would ask to be informed upon certain categorical types of questions, and he would ask to have certain papers always sent to him and to be kept informed, to take a concrete instance, when the man on the spot disagreed with what people were trying to make him say.

Sir Hari Singh Gour.

13,342. Is that your conception of the Governor-General's special responsibilities generally?—No, I am dealing now with the partially excluded areas.

13,343. Yes, but that is covered by paragraph 70, clause (f). Are your remarks confined only to paragraph 70, clause (f)?—Yes. I am dealing now with the excluded areas only. (Sir Malcolm Hailey.) I think that we might envisage the partially excluded areas as under ordinary district administration in all their incidents, but with the power to the Governor to override Ministers in discharge of the special responsibilities for those areas, and in pursuance of that power he might give directions that particular classes of

cases referring to those areas should always come to him. I would myself imagine that they would come up in the ordinary way to the Secretariat, but the Governor, in order that he might be kept informed as to what was happening in those partially excluded areas, would direct that certain classes of cases should always come to him after they had been seen by the Minister, and in that way he would be able to discharge his special responsibilities and, if necessary, override the Minister. But for all ordinary purposes those partially excluded areas would be part of the general administration, that is, for administrative purposes, but for legislative purposes there might, under the provisions of paragraph 108, be certain Acts which did not apply to them or, under the second part of paragraph 108, there might be special regulations which *did* apply to them. That is for legislative purposes; but I have described the position above for administrative purposes as being one of ordinary administration subject to any special orders given by the Governor in discharge of his special responsibility.

Marquess of Zetland.

13,344. I think I see how it would work in practice. What you have said would apply, would it, to the administration of a special regulation passed by the Governor for a partially excluded area? What I mean is this: Supposing the Governor enacts a special regulation for a partially excluded area, the administration of that regulation would come in the first instance to the Secretariat of the responsible Government?—Yes.

13,345. But it would have to come up to the Governor in addition to that?—Yes.

Lord Rankeillour.

13,346. Secretary of State, just go back for one moment to the point Lord Salisbury made. The word "provisions" in paragraph 70, I think it is, really means the regulations; it is the same thing as the regulations under paragraph 108, is it not, or does it contemplate anything else?—(Sir Samuel Hoare.) I do not quite follow the question.

13,347. Paragraph 70 (f) states: "The administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas". Those provisions are really the same thing, are they not—I ask the question—as the regulations under paragraph 108?—Paragraphs 106-109.

13,348. I meant particularly that the Governor would be empowered to do various things and you use the word "regulations"?—Yes, but it is wider than paragraph 108; it is paragraphs 106-109.

13,349. It refers to what will be provisions in the Act as well as to regulations of the Governor and Orders in Council?—Yes. It refers to all the powers in paragraphs 106-109.

Archbishop of Canterbury.

13,350. Might I supplement that. Surely as paragraph 70 (f) is drafted, these provisions merely refer to the declarations of certain areas to be partially excluded areas. It is "in accordance with provisions in that behalf"—that is the declaration of certain areas to be partially excluded areas. It does not refer as it stands to paragraphs 106-109?—I think His Grace is right. It does specifically deal with paragraph 106, but it is intended to bring in paragraphs 107, 108 and 109 by inference.

13,351. Then paragraph 70 (f) does not quite carry out what is intended as it is drafted?—I will certainly look into the question of drafting. I think it does but I will look into it.

Lord Rankeillour.

13,352. I think that is cleared up as far as it can be cleared up for the moment. Would it be true to say, speaking very generally, that the position of the Governor with regard to an excluded, or perhaps to some extent, to a partially excluded area in a Province, would be very similar to that of the Governor-General with regard to reserved services. There would be an analogy between the two?—There would be an analogy certainly between the Governor-General with the reserved services and the Governor with the totally excluded areas, but not the Governor with the partially excluded areas.

13,353. Except in regard to certain subjects which were therein reserved to him under his own regulations?—Yes; but I do not think that makes an analogy. The things are really in different categories. In the one case, departments are actually reserved; in the other case, they are not, and I think the analogy is between the Governor-General with the reserved departments and the Governor of the Provinces with the reserved areas.

13,354. Would you say that paragraph 23 on page 12 of the White Paper would really apply in the Provinces? It says "Although the reserved departments will be administered by the Governor-General on his sole responsibility, it would be impossible in practice for the Governor-General to conduct the affairs of these departments in isolation from the other activities of his Government, and undesirable that he should attempt to do so, even if it were in fact possible". Would he not have to explain and discuss his policy with regard to excluded areas with his Provincial Ministers?—I think in the case of Partially Excluded Areas certainly and in the single case of the one Totally Excluded Area, just as much as he wished to. I do not at all want to see an irrevocable division between the two. The whole basis of our proposals is assumed to be the basis of co-operation.

13,355. There might be persons who would have their representation in the Province who might have interests in the Excluded or Partially Excluded Areas, and naturally they would press him on his policy with regard to them?—Certainly, and that is the case now.

13,356. What would be the difference between the Governor's power in a Totally Excluded Area and the Chief Commissioner's power in a Chief Commissioner's Province?—The Chief Commissioner in the Chief Commissioner's Province is really much more a Federal officer at the head of a Federal unit.

13,357. You only propose to have one Totally Excluded Area, do you not?—That is our proposal.

13,358. Is there any advantage in having that attached to the Province at all rather than the Commissioner's Province? Is it not large enough?—The

whole basis of our proposal is that this particular area is so distinct in many ways from the rest of India that it has to be excluded altogether from the ordinary administration. A Chief Commissioner's Province does not go half as far as that.

13,359. Then the Governor of Assam, I suppose it would be, would have certain powers in this area or a Chief Commissioner would have in Baluchistan, would he?—It is very difficult to draw a close analogy, because Baluchistan is such a very unique territory in many ways with the interlocking of the Indian States and so on, and the tribal tracts.

13,360. Then in the Andaman and Nicobar Islands, I would say?—He would have greater powers.

13,361. Might it not (I do not ask you for a direct answer to this question) be desirable, having regard to the very special circumstances of this area and the fact that it will require greater powers, that he should not be open to any kind of pressure from the Provincial Legislature and Ministers?—That is just the object of paragraph 109.

13,362. But might not it be better secured by putting it under a Chief Commissioner with perhaps wider powers?—I think exactly the opposite would be the result, and I think by making it a Commissioner's unit you will then bring it into exactly the same kind of category as these other Commissioners' units, in which there would be likely to be much more influence and interference brought to bear from the politicians.

13,363. Federal pressure in the Chief Commissioner's Province?—It does not matter which. If Lord Rankeillour has in his mind a preference for bringing an area like this directly under the Governor-General and taking it out of the Governor of the Province, I think he will find that that change would be a mistake, for this reason: It is very important for these districts to have people dealing with them who really know in detail the local social and economic conditions. We are definitely of opinion, after some of the most expert opinion upon it, that they are much more likely to be treated sympathetically and intelligently if directly connected with the Province, that is to say the Governor

of the Province, rather than with any more centralised machinery. Our proposal is definitely, as we believe, in the interests of the Backwards Tracts.

13,364. I may say that all I was driving at was that it should be rather the special responsibility of the Governor-General than be mixed up with any Provincial politics?—I do not think it is mixed up with any Provincial politics. Under paragraph 109 we have gone as far as we can to prevent it being mixed up with Provincial politics.

13,365. It is just a matter of opinion. You have come to the conclusion that the special interests will be protected in that way?—That is the definite view of the people I have consulted both on the spot and here.

13,366. Then might I ask for a moment about the internal powers of the Governor. For instance, will he be able to have his own special police force for the Excluded Areas which work under him directly?—He could have whatever he wanted.

13,367. And the money for that will be non-votable?—Yes.

13,368. Now the only other thing I want to ask you is this. I presume that in various places there are groups of scattered aboriginal tribes which it would be impossible to make excluded areas, and yet you might want completely to exclude them from the ordinary Provincial Government. Could you have anything in the nature of some special inspection or protection of them?—I cannot think of any group of that kind that it would be likely that we should want to exclude from the Provincial administration. There is at present a procedure to deal with these scattered bodies of backward people under an Act called the Scheduled Districts Act of 1874, and I think in any new constitution there would have to be similar powers of that kind. The difficulty, Lord Rankeillour will see, is really a practical difficulty. You have got these small bodies of people scattered in and out of the ordinary life of a Province. Practically it would be quite impossible to exclude them from the Provincial Legislature. What you can do under this Act is to ensure that there is special treatment for them.

13,369. Will that be definitely continued in the Constitution Act?—(Sir Malcolm Hailey.) The Scheduled Districts Act of 1874 is an Indian Act, Sir, and, subject to anything that may be said in the Constitution Act, that would still remain in force. The Committee may have to consider afterwards how far they would provide specially for the continuation of that Scheduled Districts Act. If I might explain it to the Committee, the effect of that Act is that in regard to certain areas referred to in the Act the Local Government can, with the permission of the Governor-General, restrict the application of certain Acts or apply new Acts to it only with modification, so that where you have scattered tribes like the Gonds and Bhils and tribes which are widely scattered in some parts like the Central Provinces you can by that provide that land legislation, for instance, shall only apply to them in a particular way, and it might be necessary, in considering the Constitution Act, to say how far the Scheduled Districts Act should be modified or not.

Lord Rankeillour.] You might put a clause in the Constitution Act continuing certain Indian Acts specified in a schedule to the Constitution Act, might you not—incorporating them. That would be a subject for consideration.

Marquess of Salisbury.

13,370. Let us be clear about this. What I understood from Sir Malcolm was that this power is in the hands of the Local Government?—Subject to the issue of notification by the Governor-General in Council.

13,371. So that, if it were simply embodied in the Constitution as it stands, that would be in the power of the responsible Government of the Province?—Yes.

Lord Rankeillour.

13,372. I think you have specially in your mind, have you not, Sir Malcolm, cases such as the law relating to foreclosure and restraint and such like matters?—Yes.

13,373. Might it not be desirable to put a more definite provision as part of the Constitution, perhaps on the motion of the Governor, applying the provisions you

want, whether they are in the Depressed Classes Act or not, to the partially excluded areas?—(Sir *Samuel Hoare*.) Lord Rankeillour, if I may intervene, I think is raising a new point. In the partially excluded areas we retain these powers.

13,374. You have retained them?—We have, yes.

13,375. Under the Depressed Classes Act?—Under the partially excluded areas the Governor is free to apply what legislation he likes at his discretion. I understood Lord Rankeillour to be dealing with the difficult case of scattered backward tribes who are not inhabiting excluded areas at all.

13,376. Yes; and I think my last question ought not to have been “partially excluded”—I meant the scattered tribes. What I was asking was: Could not provisions for their protection—whether there are enough in the Depressed Classes Act or not—be incorporated in the Constitution Act?—(Sir *Malcolm Hailey*.) It would require a rather careful study of the exact provisions which would have to be undertaken.

Archbishop of *Canterbury*.] May I ask what Lord Rankeillour means by the Depressed Classes Act?

Lord *Rankeillour*.] I meant the Scheduled Districts Act—I beg your pardon.

Sir *Hari Singh Gour*.

13,377. Are not there already provisions in the various local Acts protecting these backward classes and tribes like the Gonds and Bhils?—In some cases there are, but there are some tracts of country like the Kumaun Division of the United Provinces, where the Scheduled Districts Act applies, and under that Act there have been certain restrictions on the powers of the Civil Courts. It was those cases that I was thinking of. They are not very numerous because actually the areas now under the Scheduled Districts Act correspond fairly closely with the areas which it is proposed to bring under the definition of partially excluded areas, but there might be some cases lying outside those to which I understood Lord Rankeillour alluded, which might have to be provided for by some such provision as the Sche-

duled Districts Act. That would require examination in detail to see how far they still exist.

Lord *Rankeillour*.] If the point is seized, I will not press it any further.

Sir *Reginald Craddock*.

13,378. Secretary of State, I had been intending to put some questions about the Scheduled Districts Act. That has already been dealt with to a great extent, but I want to know whether a partially excluded area means exclusion from the Constitution Scheme; that is to say, would they be constituencies in those areas, or would they be excluded from sending representatives to the Legislative Council?—(Sir *Samuel Hoare*.) They would be, Sir Reginald, in the same position as they are now. I am told that in certain cases they are divided into constituencies; for instance, I believe, in some parts of Chota Nagpur. That presumably would continue, but it would be for the Governor to use his discretion as to whether it should continue and as to how far it should continue.

13,379. Supposing he did not consider that the inhabitants of an area of that kind were really fit to exercise the franchise, would not he be able to nominate somebody to the Legislative Council who would be able to represent in that Council the interests of those aborigines; for example, I believe that in Bihar and Orissa, for some considerable time, the interests of the aborigines were served on the Council by the nomination of a missionary?—(Sir *Malcolm Hailey*.) Perhaps I might, just for the information of the Joint Select Committee, point out that there is in paragraph 172 of the first volume of the Statutory Commission's Report a certain amount of detail given as to the existing representation enjoyed by what would in future be called the partially excluded areas. It says, for instance, that in Bihar and Orissa the aborigines have in three of the constituencies a definite preponderance, and have elected two of their own Members in three of those constituencies.

Chairman.

13,380. Will you give me that reference again, Sir Malcolm?—It is at page 160,

my Lord Chairman. Whereas in the remaining seven constituencies the representatives are not those of the aboriginal classes at all. So with regard to Madras and with regard to Assam it gives details of the existing representation. It is provided in the White Paper that there shall be special representation for the local Councils, for the backward areas, on page 93. It is proposed there, for instance, that in Bihar there should be as many as seven special representatives and nine in Assam. (Sir *Samuel Hoare*.) We have not specified as to how those representatives should be selected.

*Sir Phiroze Sethna.*

13,381. They will not be nominated ?—We have not made any specific proposal.

13,382. There is to be no nomination in the Provincial Legislature ?—That is what we have generally said. Generally speaking, that is the case, but it should be noted that in Appendix III at page 91, sub-section (7), we have stated that in those exceptional cases the method of filling seats assigned to representatives from backward areas is still under investigation and the number of seats so assigned would be regarded as provisional. I would like the Committee and the Delegates, if they would, to regard this as a very exceptional case and not necessarily apply to it all the principles that might be applicable everywhere else. It is a definite exception.

*Mr. M. R. Jayaker.*

13,383. Does the White Paper give them representation in the Federal Legislature ? If you will kindly turn to page 90, Appendix II, where you have got a list, at the bottom of that list on the left-hand column is the heading : "Non-Provincial" ?—Yes ; we do not give them any representation in the Federal Legislature.

13,384. You do not include them in the words 'Non-Provincial' ?—No.

13,385. I want, therefore, to know that they are not mentioned anywhere in this list ?—They are not mentioned purposely. We somehow felt that one or two representatives in the Federal Legislature really would not effectively represent their interests.

13,386. I am asking this question because I have a recollection that the Statutory Commission recommended that they might be given one or two seats in the Central Legislature. That is my recollection ?—Be that as it may, it is really a question for us to consider whether one or two selected persons from these admittedly very backward areas, with very little in common with the Federation as a whole, are really going to advance the interests of the backward tracts.

*Sir Phiroze Sethna.*

13,387. The same argument would apply to the Provincial Legislatures ?—I do not think so, because in the Provincial Legislatures you can give obviously a more effective representation ; in the Federal Legislature obviously they could not have more than one or two, whereas in a Provincial Legislature, for instance, Bihar, we suggest they should have seven, and that is an effective body.

*Dr. B. R. Ambedkar.*

13,388. In Assam, there are nine ?—In Assam there are nine.

*Sir Reginald Craddock.*

13,389. You mentioned, Secretary of State, that the only totally excluded areas outside the North-West Frontier, and so on, were to be found in Assam. There are also the Chittagong Hill tracts about which I have no doubt Lord Zetland would know, but, as they are on the borders of Burma near the Arakan Hill tracts, they would fall into the same category as the excluded portions of Assam, and the same no doubt would apply to the similar areas in Burma ?—I do not know whether Sir Reginald is asking me a question. If so, I am not quite sure what it is.

13,390. I wondered whether when you said "confined to Assam," you had in mind also the Chittagong Hill tracts and the parallel areas in Burma ?—Yes, I had first of all in mind the Chittagong area and, under our proposals, we treat that as partially excluded and not totally excluded. We think it does differ in some respects from these rather wilder hill tracts in Assam. As to Burma, I think

we had better discuss the Burma excluded areas when we come to the more detailed consideration of Burmese questions.

13,391. The only reason I mentioned that was because one of the witnesses yesterday put forward the plan that geographically and administratively there were certain areas which are now included in Assam which had better be brought under the same administration as the parallel areas on the borders of Burma. I have mentioned this because it interested me. The suggestion came from an Assam officer. I should not have dared to suggest it even?—I am always a little nervous of starting upon a new delimitation of Frontier Provinces, and so on. I do not know what Sir Malcolm Hailey would say from his experience on a point of that kind. (Sir Malcolm Hailey.) The definite suggestion made was that there were certain areas in the Assam Hill tracts which were so similar to neighbouring areas in Burma that it might be possible to constitute a new Chief Commissioner's charge taking up both the Assam and the contiguous Burma tracts. I think that would be a point upon which the Government of India would have to be consulted, particularly with reference to the strategic position and also the question of communications, before it would be possible for the Secretary of State to commit himself to any opinion at all.

*Sir Hari Singh Gour.*

13,392. And not forgetting the question of finance?—The communications are of extreme difficulty there.

*Major Attlee.*

13,393. Was the suggestion a Sub-Province of Burma?—Yes, a Sub-Province which would probably, according to the witness, have to be administered from Burma, but if Burma is to be separated, the whole question of the strategic position on the North-West Frontier would have to be taken into consideration.

*Chairman.*] It is perhaps doubtful whether that matter can usefully be pressed any further this morning, Sir Reginald.

*Sir Reginald Craddock.*

13,394. There was another point which was raised yesterday upon which I should very much like to put a question to the Secretary of State. In the Central Provinces, these aboriginals are, you might say, scattered in almost every district of the Province, and, indeed, in Berar too the Korkus are a special aboriginal class. All these areas are included in certain special districts of the ordinary law, and administration goes on in those areas and always has, but, at the same time, the interests of the aboriginal and backward tribes are apt to be sacrificed if you do not have some measures for protecting them. In the Central Provinces, there was recently a measure to prevent the alienation of land, to protect them and their lands from alienation. That was certainly right, and certainly should have been done earlier, but one of the reasons, why you do not get legislation of that kind put forward is that the communities themselves are so scattered under entirely different officers that cases for the necessity do not come to light until a great deal of the mischief has already been done. The two witnesses yesterday, who were extremely anxious about the welfare of these tribes both in and outside the forests, wanted some special protection for them. It can hardly be geographical except in a few cases like the Chanda Zemindari, but it requires all the same someone who is specially charged with that duty, and I put it to the witness, and I also ask the Secretary of State about that, whether he would also take into consideration the possibility of attaching to the Governor's charge such a post as that of superintendent of aboriginal tribes. It would only want one officer of that kind who would visit all these places in the Provinces, and see how far the interests of those tribes were being looked after by the several District Officers into whose charge they happened to fall. Such an officer would then keep the Governor informed of any measures that were necessary for the protection of these tribes, whether as regards liquor laws, which would have to be very carefully extended towards these areas, or money-lenders, litigation, and so forth. One point that the witnesses made was that there were tribal customs and laws of

these tribes, but such laws had not been recognised, and they were dealt with under the ordinary law, mainly that applicable to the Hindus. I wanted to know whether the Secretary of State would be prepared to consider an appointment of that kind on the Governor's charge?—(Sir *Samuel Hoare*.) The difficulty is that Sir Reginald's proposal really goes a very long way, and it might go further than I think he would desire. He admits himself what is the state of affairs now, namely, that these scattered people are also subject to the ordinary law of the Provinces.

*Sir Hari Singh Gour.*

13,395. Modified by special laws acting in their favour?—The Scheduled Districts Act and other Acts.

13,396. And modified by special laws acting in their favour?—And by special local laws enacted in their favour. It is going a long way to give the Governor a special officer acting under him with a responsibility for dealing with questions that really cover the whole administration. That is the practical difficulty. I would have thought myself that the way to deal with these scattered people is rather on the lines of the Scheduled Districts Act and the existing local legislation, rather than to set up that kind of special organisation, but I do not know what Sir Malcolm Hailey would say about it. (Sir *Malcolm Hailey*.) I gather that the proposals made by the witnesses yesterday and, to a certain extent, endorsed by Sir Reginald Craddock, were that there should be a special adviser for the Government in regard to these particular people in their particular areas. It was not, as I understand, the intention to give the Governor any special powers, nor was it proposed to bring these special areas under regulation as partially excluded areas. The matter was one for advice only.

*Sir Reginald Craddock.*

13,397. Yes, that is so, Sir Malcolm. What is required is a peripatetic officer who would find out the actual facts in these various places, find out whether the various officers concerned in the administration were looking after or failing to look after the interests of these

tribes and bring those facts to the notice of the Governor who would then take action or not as he thought fit. It is a question of intelligence and information about these tribes more than any interference with administration, except in so far as the result of such reports might lead him by means of the Scheduled Districts Act or in exercise of his own responsibilities to such people to take action for their better protection?—If I might say so, Sir, I think that that is a point which might well be considered as a recommendation, though it is a decision that would have to rest with the local government itself.

13,398. Yes?—The local government in effect would be creating an officer similar to that which has been created in some Provinces for looking after the special interests of depressed classes; in others, for looking after the special interests of labour, and, in one Province, for looking after what are known as the criminal tribes. Most of those officers are advisory, and their posts were created by the local government themselves in order to obtain the necessary information and advice.

*Mr. M. R. Jayaker.*

13,399. Might I just clear up one point which has been raised which arises out of the questions put by Sir Reginald Craddock. Under the White Paper Scheme, as you have it here, there is nothing which allows the Governor to enjoy special responsibilities over any backward tract unless that backward tract is declared to be a partially excluded area?—That is so.

13,400. Or a totally excluded areas?—That is so.

*Marquess of Salisbury.*

13,401. Is that quite clear, that outside an excluded or partially excluded area the Governor has no special responsibilities to look after the aboriginal tribes?—Save in so far as it might come under any of his special responsibilities described in Proposal 70.

*Archbishop of Canterbury.*

13,402. But these deal only specifically with partially excluded areas. Mr. Jayaker has just anticipated the difficulty which I have. I understand there



are these what may be called special areas which are dealt with now, I understand, under this particular Scheduled Districts' Act, but they are quite different from partially excluded areas. The Governor has a special responsibility for partially excluded areas, but I think Mr. Jayaker is right; there is nothing in the White Paper to give him any special responsibility over these special areas?—That is so (Sir Samuel Hoare.) The answer is that it is so as His Grace suggests.

Marquess of Zetland.

13,403. Might not that come under paragraph 70 (b)? Might they not be regarded as minorities?—They might be minorities, but it is also conceivable that they might be majorities in a particular district.

13,404. Not all over India?—Might they not be a majority in a Province?

Sir Phiroze Sethna.] Never in a Province.

Mr. M. R. Jayaker.

13,405. There is no provision like paragraph 108 with reference to minorities?—No.

13,406. Therefore, that provision can be applied to a backward tract only in the event of its being declared by His Majesty in Council as a partially excluded area?—Yes. (Sir Malcolm Hailey.) I described the officer as an adviser to the local government, not necessarily to the Governor, and I think that was Sir Reginald Craddock's own definition of him too.

Sir Reginald Craddock.

13,407. I only want to know whether the Secretary of State will consider any method of getting round or of extending the special powers of the Governor to cases of this kind. They are territorial in a sense but not in a compact sense. They come under the ease under investigation simply because of the nature of the inhabitants and they might be found in a corner of one district or in a corner of another district, but they are so scattered that it is very difficult to treat them under the Scheduled Districts' Act, for example?—(Sir Samuel Hoare.) Certainly, we will look into the point. It has not been

absent from our minds. The difficulty is the practical difficulty of dealing with it.

Marquess of Zetland.

13,408. Secretary of State, surely it would be held to come under paragraph 70 (b), which says "In the administration of the government of a Province the Governor will be declared to have a special responsibility in respect of (b) the safeguarding of the legitimate interests of minorities." Surely, they may be held to be minorities in the Province?—We have always had in mind when we were dealing with minorities, the recognised religious communities, namely, the communities that have formed the subject of the various communal decisions. There is considerable practical difficulty when you get away from that conception. You then get into all manner of difficult questions, as to whether a particular body in one community are a minority, and so on, as to whether a particular party of people are a minority, and so on. That is our difficulty.

13,409. Arising out of that, have you actually drawn up a definition of "minority"?—We have never drawn up a definition of "minority," but in our discussions we have always assumed that the minorities meant the religious communities.

13,410. That may be so in our discussions, but when you are administering the Act, surely you have to have a definition of a minority if you are to administer it efficiently?—I am not quite sure whether it is so. I should like the views of the Committee upon a point of that kind, whether it is wise to make a rigid definition.

Mr. Zafrulla Khan.] On that point, Secretary of State, I was wondering whether you are correct in stating that it has been in the discussions assumed that the minority should be so restricted. If you will kindly turn to page 18 of the First Report of the Round Table Conference, paragraph 16, which deals with this matter, so far as the Governor-General is concerned, you will find that the expression there used in the last three lines is "serious prejudice to the interests of any section of the population must be avoided." That is where

this particular safeguard started from. Then, if you will kindly look at page 28 of the Third Report of the Round Table Conference, paragraph 7 (ii) "it was generally agreed that they should be the following: (ii) the protection of minorities." There is a note on that at the bottom of the page which says that "Mr. Zafrulla Khan proposed for the wording of (ii) 'the avoidance of prejudice to the interests of any section of the population,'" so it was not assumed throughout that minorities should be restricted in the way you suggested.

Dr. B. R. Ambedkar.

13,411. Also the fact that they are included in the Communal Award by having a certain number of seats assigned to them. Would that not also bring them under the definition of "minorities"? I mean if, as you said just now, the minorities would be those communities that are covered by and included in the Communal Award, I should imagine the Backward Classes also would be included in the Communal Award?—I think after this discussion I had better look once again into this very difficult question of these comparatively small bodies of people scattered about outside the Excluded Areas, and perhaps Members of the Committee and the Delegates will also think over the best way of meeting what appears to be a rather general desire.

13,412. Might I draw your attention, Secretary of State, to the peculiar position occupied by the Criminal Tribes. The Criminal Tribes are more or less scattered in the general population. I am speaking of the particular experience of Bombay; I suppose it is so in other Provinces. Now in order to protect the Criminal Tribes, which are, as I say, scattered in the general mass of the population, there is, I think, a Government of India Act called the Criminal Tribes Act. I am giving an illustration in order to suggest a method of protecting them. That Act gives the Governors some powers to make regulations with regard to the movements of these people and their interests. Would it not be possible for the Governor under paragraph 108 to pass some such regulation affecting the mode of living or protection of these people, although they may

be scattered?—It would only be possible under these clauses in the Excluded and partially Excluded Areas.

13,413. What I wish to put to you is this: Would it not be open, for instance, to the Governor under paragraph 108, once he has got a definition of a person belonging to a tribal area or an aboriginal class, to make certain legislation affecting him whether he stayed in the Excluded Area or whether he stayed in the population, as is the case with the Criminal Classes? The legislation of the Criminal Classes affects the members of the particular tribe no matter where he stays?—(Sir Malcolm Hailey.) The Criminal Tribes Act is no longer a Government of India Act. They have become matters of Provincial legislation. The Criminal Tribes Act gives to the Local Government not specifically to the Governor, power to control the movements, to register and restrict in various ways persons who fall within the definition of Criminal Tribes as notified by the Local Government. Therefore it would be difficult to apply that analogy to the extension of the special protection of the scattered aboriginals or Backward Classes. In any case, that is a matter which the local Legislature could undertake now of its own initiative. My point was that it gives no special power to the Governor as apart from the local government.

13,414. But under paragraph 108 the Governor could, for instance, by notification classify people as belonging to aboriginal or Backward Areas, and then pass legislation affecting them, no matter where they stayed?—(Sir Samuel Hoare.) I do not think he could do that under paragraph 108. Under paragraph 108 he could only deal with people living in the scheduled territory.

Mr. M. R. Jayaker.

13,415. May I mention in this connection that although there is a feeling in India that proposals 106 to 109 of the White Paper withdraw from the influence of the Legislative Council large tracts and large numbers of people who are unfortunate Indians and who are in a backward state of civilisation, may I assure him that if he goes on still adding to this principle by giving the power to

the Governor under paragraph 70 to deal as a special responsibility with Backward Tracts which are not declared to be Partially Excluded Areas, that feeling will be considerably increased?—We have tried to take into account every point of view, and I am aware that there has been considerable nervousness in India as to the extent of these areas. Having taken those views into account, and having also consulted the best expert opinion that was available from the tracts themselves, we think that our proposals are upon the whole sound ones; but I have always thought that somehow or other it might be a good thing, whether by application of the Scheduled Districts Act or some plan of that kind, to have done as much as we could to safeguard the rights of these small scattered communities. My difficulty has been to find a practical way of doing it in which in the first place you would not make a big issue between the Local Government and the attempt that was made with probably a disastrous effect upon the tribes themselves, and also at the same time to safeguard the interests of these people. It is a difficult practical question.

13,416. But the Acts by which they are at present governed are Acts of the Local Legislature?—Yes.

13,417. Those Acts do not remove them from the purview of the Local Magistrates?—No.

13,418. The suggestion was made that in those Backward Tracts which are not declared either Totally or Partially Excluded Areas, the Governor would have the power of taking them out of the Local Legislature by adding a clause to proposal 70 or by similar other provisions they will be removed from the influence of the Local Legislature?—What I have had in mind was some means of ensuring a continuance of the protection that they already receive under this Act of 1874 and under the various Provincial Acts.

13,419. Provided you give the power to the Local Legislature to give them that special protection?—Yes. I think what is in the minds of several members of the Committee is whether our obligation does not go somewhat further than that.

13,420. Yes?—Namely, to make some special provision under which these Local Acts will continue.

Lord Irwin.] If I may interject, I suppose, Mr. Jayaker, it might be argued that the Local Legislature of the future will differ in this regard in one vital matter, in that the official element will no longer be there, and therefore from that point of view it might be argued that if, as Lord Zetland suggests, it were thought desirable to extend the definition of minorities to allow the Governor in the last resort, if the Privy Council were not doing its duty, to intervene, that special responsibility would be replacing the official element. That is what it amounts to.

Mr. M. R. Jayaker.

13,421. My difficulty is that I am not quite easy in my mind in assuming that the Local Legislatures would be indifferent to or unmindful of the special protection which these tribes desire. After all, these Acts are the Acts of the Local Legislature?—Yes. Let me disabuse Mr. Jayaker of any idea that he may have in his mind that this implies distrust of an Indian Legislature because it is an Indian Legislature. My distrust goes a good deal further than that. My anxiety is to prevent politicians, British Indians or anybody else, interfering with people whose conditions are so different as to make the political conditions really inapplicable to them. I should say exactly the same of the British House of Commons in distinctions of this kind.

13,422. But perhaps the Secretary of State is not aware that many of the class called politicians have been the prime movers in starting societies for the regeneration of these Backward Classes?—That is certainly so, but the natural inclination—here perhaps I am generalising from one's experience—of any democratic legislature is to attempt to impose uniformity upon everybody else, and it is just this attempt to impose uniformity that does make the trouble with people who are really living in quite a different world.

Sir Austen Chamberlain.

13,423. May I ask one question before this point is left? Secretary of State, do you propose at any time or when drafting the Constitution Bill to introduce a definition of minorities?—We have not so far contemplated putting in a definition.

13,424. I am not sure that I am right, but might not a case be taken before the Supreme Court which would turn upon the question whether somebody was a minority or not, and therefore whether the clause of the Act which was in dispute did or did not lawfully apply to it?—No, it cannot come into the Courts, Sir Austen, under the last paragraph of Section 70 at the top of page 56: "It will be for the Governor to determine in his discretion whether any of the 'special responsibilities' here described are involved by any given circumstances." That is intended to safeguard the position. Of course, Sir Austen, if a more precise definition is needed one might use the vehicle of the Instrument of Instructions.

Marquess of Salisbury.

13,425. You see, the word is so very wide now. Everybody belongs to a minority?—I think we have always contemplated that you would give instructions to the Governor-General and the Governors as to how he could apply those powers.

Lord Rankeillour.

13,426. It comes in under Section 18, no?—I have just said so.

Lord Winterton.] At the Third Round Table Conference we discussed his matter, and the result of our discussions was mentioned by Mr. Zafrulla Khan at an earlier stage at page 28. There in our Report, we actually said: "The actual terms on which the several items should be expressed formed the subject of some discussion, but it should be made clear in the first place with regard to the list that the actual wording of the items does not purport to be expressed here with the precision, or in the form, which a draftsman, when the stage comes for drawing a Bill, would necessarily find appropriate." That would

seem to imply that the sense of our discussion on that occasion was that there would have to be some further definition.

Major C. R. Attlee.

13,427. Might I ask the Secretary of State further on that, does not it go to the whole question of the power of the Governor-General with regard to legislation? As Lord Salisbury says, everybody is a minority; every Act of Parliament damnifies some minority, and it is a very important point that there should be laid down some restriction?—Yes; but I would suggest that members of the Committee, before they form any final conclusion upon a point like this, should consider the alternative—whether it is not better that the direction should be given in the Instruments of Instructions. I think they will find when they come to make a precise definition of minorities it is very difficult. They may find that an attempt at definition will really do harm to what we have all got in mind, namely, that certain fairly recognised minorities should be safeguarded.

13,428. Will not that also involve a definition, and as the instructions can be altered from time to time that power of protecting minorities would be subject to the fluctuations according to the instructions from the Home Government to the Governor?—You see, Major Attlee, it does not take legal form in the instructions; it cannot be brought into Court. One wants to avoid the kind of contingency evidently felt by Sir Austen Chamberlain.

Archbishop of Canterbury.] That is an important point we have yet to consider with regard to the Federal High Court, is it not, Mr. Secretary of State, whether it should have any power of interpreting Instruments of Instructions and Instruments of Accession as well?

Marquess of Reading.

13,429. In so far as the Instruments of Instructions or of Accession are incorporated in the Statute, whether in the Schedule or not, they are part of the Statute and would be considered by a Court if the proper occasion arose. I do

not see how you can prevent that?—I should like to deal with that more general question when we come to the Federal Court.

Lord Winterton.] But does not the difficulty arise there of making it open to the Courts to disenss what His Majesty has said?

*Chairman.*

13,430. It might be more convenient, Secretary of State, if that matter were dealt with at a later stage when we are dealing with the Courts?—I think so.

*Miss Pickford.*

13,431. The Secretary of State has said that it is only contemplated that the Hill Tracts of Assam shall be a Totally Excluded Area?—Yes.

13,432. Leaving aside for the moment Burma, are there any areas which at the present moment are administered as Totally Excluded Areas which would under the White Paper be Partially Excluded Areas?—I think generally speaking the answer is, No; I think No covers it all, but there may be minor details.

13,433. I was wondering because of page 159 of the Statutory Commission Report, where it seems to put, for instance, the Chittagong Hill Tribes as a Totally Excluded Area and also an area in the Punjab?—The area in the Punjab is a very minute area which is so far away that nobody can administer it under any administration. Sir Malcolm Hailey tells me that nobody ever goes there, and they cannot get there because there is too much snow.

13,434. I was thinking more of the Chittagong Hill Tracts?—Yes, in the case of the Chittagong Hill Tracts we recommended that it should be Partially than Totally Excluded.

13,435. Then the position of that tract changed?—There is a change in the position of that tract; it is really with Darjeeling and the Chittagong Tracts; it is for the reason I have given comes into the Partially Excluded Area.

sent?—At present.

*Sir Abdur Rahim.*

13,437. Is the entire district of Dacca, including the seat of Government, Partially or Totally Excluded?—I am circulating a suggested list of the districts that we should propose to schedule as Totally Excluded or Partially Excluded Areas.

*Miss Pickford.*

13,438. Thank you?—We have taken into account very much the previous treatment of these districts; that is really what has guided us in distinguishing between one and the other.

*Lord Eustace Percy.*

13,439. Secretary of State, in preparing your list were you proposing to declare partially excluded areas covering any considerable part of the Central Provinces about which Sir Reginald Craddock was questioning you?—No, not any districts that are not already treated as backward tracts. There are no other districts.

13,440. But there are scheduled districts in the Central Provinces, are there not?—(Sir Malcolm Hailey.) There are certain districts which have come under the Scheduled Districts Act, but there were no districts which were notified under Section 52 of the Government of India Act as excluded. That is the present situation, and I understand the Secretary of State's intention is that no districts in the Central Provinces should be notified as wholly or partially excluded in the future.

13,441. Then may I ask this question or put to the Secretary of State the difficulty: I understand the scheme put before us by Dr. Hutton yesterday, and those who think like him, to be that wherever you have a compact backward population the area should be declared a totally excluded area, and that wherever the population is scattered you should have some very loose and only tentative outlying provisions to deal with these scattered tribes. I find some difficulty in understanding what is the idea behind the distinction in the White Paper between totally and partially excluded areas since the partially excluded areas do not cover the scattered tribes. At

understand it, the partially excluded areas are areas of compact tribal population almost as much as the one totally excluded area which the Secretary of State proposes?—(Sir *Samuel Hoare*.) These areas are already divided into categories; they are divided I think into three categories. We have reduced that division to two, and we have reduced it because in these areas where there are compact agglomerations of tribes there are existing differences of administration. With the few small exceptions that I have just mentioned, we are going on with the present arrangement, namely, that we keep as totally excluded the only one big area that is totally excluded now, namely, the Assam Hill tracts, and we go on with the partially excluded areas very much on the lines on which they are administered now.

13,442. Then the distinction really is a distinction of history rather than of reason or fact?—No; it is a distinction of history based upon a distinction of fact. My advisers tell me quite definitely that there is a difference in the tribal conditions and the general level of the population between these types of excluded areas.

13,443. But there is no difference in the extent to which the partially excluded tribal area is a compact and homogeneous area?—Compact, but in a different level of life.

13,444. You mean a more advanced state of civilisation?—I mean a more advanced state of civilisation.

13,445. The regime of the partially excluded area is so widely defined that you can have any degree of sterilisation, so to speak, of that area from the mere non-application there of certain revenue and land laws to the total exclusion of the area from the whole body of the Province?—Yes.

13,446. That is as far as law is concerned, and administratively the administration of a totally excluded area would probably be drawn from the Provincial service so that in fact you may have all degrees of administrative independence right up to total exclusion?—Yes.

13,447. And there may be very little difference between partial exclusion and total exclusion?—No, I would not say

that at all, from what I am told. There might be a great difference. There is already a great difference if you compare the administration in one of the big partially excluded areas, namely, Chota-Nagpore, with the big area in Assam.

13,448. I quite understand that there are differences. I am talking of the constitutional effect of the White Paper proposals. There is nothing to prevent a Governor by the exercise of his power making a partially excluded area practically wholly excluded and practically synonymous with a totally excluded area?—In legislation, it is perfectly true that it rests at his discretion as to whether the Provincial legislation should be applied or not. In the case of administration, there is this difference, that in the partially excluded area, the administration is provincial; in the excluded area it has its own administration.

13,449. Yes, but the degree of direction which the Governor has over a man drawn from the Provincial Civil Service and who is employed in a totally excluded area, would be very little different from which he would have over one under his own control in a partially excluded area?—You cannot generalise on a question of that kind. It must depend on the circumstances.

13,450. It was the degree of exclusion which was the point of my question. If you are going to confine total exclusion to one Frontier district, is it not the fact that what you are really doing is not to have two categories but to have one great category of partially excluded areas which may vary enormously in their degree of exclusion?—I do not know about "varying enormously," but they certainly vary.

Major Attlee.

13,451. I should like to ask the Secretary of State, first of all, with regard to the general idea of these excluded areas. Is it the intention of the Government that they should continue to be developed on their own lines, or is it the idea that they should be gradually absorbed in the general administration?—I should hope that they would be developed on their own lines.

13,452. With regard to finance, the evidence before the Statutory Commission (the evidence that Dr. Hutton also gave us upon that) was that there was a fear and an actuality sometimes that money would not be forthcoming?—Yes.

13,453. What power will the Governor have to see that adequate money is provided for these areas?—Money is non-votable. He can have what money he wants.

13,454. But take the partially excluded area. There the administration will be under the Ministers subject to the Governor's powers?—Yes.

13,455. Take the Education Minister?—Yes.

13,456. The allocation, I take it, of schools and so forth, is in his hands, is it not? The allocation of money for education in particular areas would be in the hands of the Minister, would it not?—Yes.

13,457. How would the Governor be able to ensure that adequate schools are put in the partially excluded areas?—He can put it into the budget.

13,458. He can insist on the Minister spending so much?—Yes.

13,459. Take, for instance, Bihar Province with the Chota-Nagpore area. Can he insist that a certain portion should be spent there?—Yes, he can insist.

13,460. The next question I wanted to ask you was with regard to these partially excluded areas. Is it the idea that the general organisation of the Province would be extended to these areas so that you would have Ministers operating in those areas, or would it be possible for the administration to be carried on on the lines of the aboriginal tribes assisted by the District Officer?—In the totally excluded area, the answer is, of course, that it would go on as Major Attlee suggests. In the partially excluded area, we contemplate that it is the Provincial administration, and, to that extent, it is the Provincial Ministers who are responsible for the administration, always, as I said earlier, subject to the special provisions that the Governor may make.

13,461. The point was put to us 'hat the more satisfactory way of running

these areas was that they should be run with a considerable degree of autonomy by the people themselves?—Yes.

13,462. With the advice of an experienced officer? If you have Ministers operating and the various services operating in the ordinary way, will it not be difficult to secure that?—Yes. At the same time, of course, it is also difficult to withdraw from these areas the kind of connection that they already have with the Provincial administration. This is no new proposal. It is really going on with what the state of affairs is now.

13,463. You said that your advisers had generally been against the exclusion, I think, of any area except the Assam area? The evidence we had from Dr. Hutton was that a large number of areas should be totally excluded, and that he regretted that some were now only partially excluded which he would have liked to see wholly excluded. His general line was the more exclusion the better?—Yes, and Dr. Hutton would not be satisfied with the present system in India. He would like to withdraw a number of these areas that are now connected with the provincial administration and to cut them away from the provincial administration. We have based our proposals really upon continuing the present practice.

13,464. Would not continuing the present practice defeat your intention of preserving the present practice, because, as far as you allow the introduction of the reform scheme of Ministers, and so forth, do not you cut into the native rule altogether and practically destroy it?—It depends on the Governor entirely how far that risk might take effect. Would Major Attlee address himself, not now, but when he thinks it over, to the other side of the problem, namely, the fact that, as Mr. Jayaker stated earlier, there are a number of Indians, administrators and public men, who do take a very great interest in these backward tracts. We had one of them giving evidence, Major Attlee will remember, at the Orissa Boundary discussions that we had a gentleman who obviously knew more about those particular tribes than almost anybody living. It is going a long way to cut a large

number of these areas entirely adrift from the Provincial Administration. Gentlemen like the gentleman I have in mind would say that he would take perhaps a closer interests in the conditions in the tribal tracts than anybody.

13,465. Is not there a distinction between the administration and the legislature? Has any Indian Legislature shown much interest in the excluded areas and the backward areas in its Province?—I think so far as legislation goes these Proposals are perfectly safe; that legislation will only be applied to the Provinces—

13,466. I am not speaking of legislation, but the Legislature—the Members of the Legislature—Legislature as a whole. Has any Legislature shown any particular interest in the excluded areas within its Province?—I should like to hear the views of some of the Indian Delegates on a question of that kind.

Mr. N. M. Joshi.

13,467. On this point of Legislature, did any Government nominate any Member to represent the aboriginal classes in any Legislature?—I do not think if they did it would carry anybody very much further. I do not think one aboriginal in the Legislature would have much chance against the rest.

Mr. N. M. Joshi.] I am asking the question, did any Legislature take any interest in them? In these subordinate tribes if people who were interested were not in the Legislature at all, there would be nobody to move the Legislature.

Lord Eustace Percy.

13,468. Might I intervene to put one question. As regards legislation, is not the difference this that under the present Proposals with regard to partially excluded areas, the Legislature will tend to pass, say, general land legislation?—Yes.

13,469. The Governor will have to issue a special regulation saying that this shall not apply. Under a greater measure of exclusion the Legislature would be in a much safer position and the Governor in a position much less exposed to friction if no legislation passed by the Legislature applied to that area except when specially applied by the

Governor or by some special machinery?—(Sir Samuel Hoare.) But this is our proposal.

13,470. Surely it is not?—It is the proposal under paragraph 108.

13,471. No. "The Governor will also be empowered at his discretion to make regulations for the peace and good government of any area which is for the time being an excluded area or a partially excluded area, and will be competent by any regulations so made to repeal or amend any Act of the Federal Legislature"?—Will you read the first paragraph?

Archbishop of Canterbury.

13,472. But, Secretary of State, that applies not at all to these special areas or special tribes with which we are dealing just now, but only to excluded or partially excluded areas?—Exactly, but that was the question asked me by Major Attlee and by Lord Eustace Percy.

Lord Eustace Percy.] I beg pardon; I have missed that.

Sir Abdur Rahim.

13,473. The excluded areas are a reserved subject, are they not?—Yes.

13,474. And all legislation has to be initiated by the people in charge of the reserved departments?—Proposal 108 deals with it.

Sir Abdur Rahim.] I mean under the present practice, under the Government of India Act, all legislation has to be initiated by Members in charge of the reserved departments.

Sir Hari Singh Gour.] No, I do not think so.

Sir Abdur Rahim.

13,475. I mean so far as the Government is concerned, not private legislation?—(Sir Malcolm Hailey.) There are very varying degrees applying as shown on pages 159 and 160 of the First Report of the Statutory Commission. There are very various degrees applying to the areas at present. For instance, Darjeeling and Lehault are entirely under the reserved departments, the Governor in Council. In certain other tracts, the Ministers exercise authority, although under the rules of business absence that



authority has been limited. You must take each tract separately in that way.

13,476. Take Ranchi, for instance, that is under a reserved department?—That is under a reserved department. You must take each one separately to get at the facts.

Dr. Shafa'at Ahmad Khan.

13,477. In the Shan States, the Governor has direct charge of that area?—(Sir Samuel Hoare.) But the Shan States is Burma and the Shan States we have left outside any Burma proposals, as Dr. Shafa'at Ahmad Khan will remember.

Major Attlee.

13,478. One further question and that is with regard to finance. Have you considered the possibility of making some kind of grant from Central Revenues to provinces which are burdened with deficit, such as Bihar and Assam?—We have not only considered the necessity of a grant of that kind, but we are actually proposing it in the case of Assam. Assam is the only case in which we are making a proposal of that kind, and we are assuming a substantial grant to Assam for the backward tracts from the Federal Centre.

Major Craggan.

13,479. They are all deficit areas, I suppose?—Yes.

Major C. R. Attlee.

13,480. Will those grants be tied up, so to speak, with administration; that is to say, will they be grants in aid of the backward areas, or are they just contributions to the general revenues of the Province?—I have not contemplated exactly what form they would take; whether it would be a part of the general grant for making up the deficit of Assam or whether it would be ear-marked for a specific purpose.

13,481. As I understand at present in the financial proposals there are deficit Provinces which, for one reason or another, are going to be given certain subventions. Is not Bengal, for instance, going to be given something in respect of jute?—Yes.

13,482. Similarly, would the grant, whatever it be made to Assam, or say,

there was one in Bihar or possibly for the new Province of Orissa, be definitely owing to the fact that they have backward areas for which they are responsible?—In the case of Assam, which, as I say, is the only case in which we make a proposal of this kind, the sum would be given in view of the fact that there was this heavy expenditure involved in the hill tracts. Whether an actual amount should be ear-marked or not for expenditure in those tracts seems to me to be an open question. Offhand, it does not seem to me to matter a great deal because the Governor there has the right to have what money he wants.

13,483. My point rather was as to whether, as a matter of fact, that grant in Assam, although put on those grounds, was because Assam could not carry on without it: whether there was not just as strong a case for making a grant to Bihar or, say, to Orissa if it has a considerable amount of backward areas attached to it, so that in effect the legislatures in so far as they have to spend money would not feel that they were having a burden attached to them by political accident without recompense from the general body of taxpayers in India?—We felt that we could not go further than to make this proposal for Assam, in view of the general state of Indian finances and we felt justified in making the proposal in the case of Assam, first of all, because the tracts are of great extent and involve a considerable sum of money, and, secondly, because Assam is a frontier district. A grant of that kind could be justified upon the ground of defence, just as a grant is needed from the Federal Centre to the North-West Frontier Province administration.

Sir Hari Singh Gour.] And Major Attlee will remember that the Bihar finance will benefit by the separation of Orissa.

Major C. R. Attlee.] Quite, but it will still be tied up with Chota Nagpur; that is all.

Lord Snell.

13,484. How far are the people concerned in the backward areas settled in a locality and how far are they nomadic—migratory?—The areas which

we are dealing with imply that they are settled in those areas.

13,485. The care of these peoples is to be under the Governor, but is that care to be protective as against physical and economical deterioration, as well as control in regard to law and order?—That is just one of our objects in giving the Governor these special powers. It is not only law and order that we have in mind. It is the whole field of government.

13,486. Then I cannot quite foresee how the Governor is to be kept aware of the possibly changing condition of these backward peoples?—He is kept aware of what is happening through the reports from the administration, whatever it is, in the areas.

13,487. And the officers concerned will be under an obligation to see that the Governor is aware of difficulties in a particular area?—I would rather put it in this way: The Governor is under an obligation to keep himself informed of these affairs and he will give whatever direction he wishes for that purpose to the officials, to keep him informed.

13,488. And there is no reason to presume that there is any danger that he will not be kept aware of them?—If he is carrying out his duties, no.

13,489. Then just one last question. I can see how the area is to be tied up to the Governor, but I cannot see how it is to be untied if the character and capacity of the population develop?—It would be untied by the procedure suggested in paragraph 106, namely, an Order in Council removing a particular area from the category of an excluded area into an ordinary field of Provincial administration.

13,490. On the advice of the Governor and through the Secretary of State?—Yes.

Lord Middleton.

13,491. May I interrupt for a moment in regard to what Lord Snell was asking about discovering anything in connection with these aboriginal tribes? I would like to reinforce what was put forward by Sir Reginald Craddock with regard to a plea for a special Service Officer. I have had experience of some of these aboriginal tribes and I do know that they form a very special study, and if

we are to rely in future upon finding out about them from the ordinary District Officers very little indeed will be found out. I can give a case in point. I stayed with them on several occasions in the Central Provinces and when I told my experiences to the District Officers they were surprised that I had obtained any contact with them, because they had never even seen them?—Lord Middleton surprises me with what he says. Some of the greatest experts upon these questions are District Officers. For instance, I think Dr. Hutton, who gave evidence yesterday before Sub-Committee D, is the best known expert upon these questions of anybody in India, and I think he is a District Officer.

Sir Hari Singh Gour.] Yes.

Lord Middleton.] I think he is rather the exception. Certain tribes exist, I think, in four districts of the Central Provinces which are so elusive that unless anybody knows them pretty well they never even see them.

Mr. F. S. Cocks.

13,492. Secretary of State, following upon Lord Lytton's question, will any provision be made for such an Officer?—I gave a number of answers earlier this morning upon that very point, and I do not think I have got anything to add to them.

13,493. I am sorry, but I did not remember exactly what you had said; regarding Proposal 106 you say that these areas will be embodied in a schedule. Will this Committee have an opportunity later on of discussing that schedule?—I said I was going to circulate a suggested schedule to the Committee. Whether they will discuss it or not is a matter for the Committee.

13,494. I understand that at the present time there are areas which, although not backward tracts in the constitutional sense, come under the Scheduled Districts Act where the executive has a power of reserving legislation. What is to happen to those?—That again is one of the questions that we were discussing at great length this morning, and I said to the Committee that I would take into account the point that had been raised and see whether some practical way could be found to deal with them.

13,495. Under Proposal 108 the Governor is empowered at his discretion to make regulations for the police and good government of any of these areas. I would just like to ask one or two questions to see how far that power extends. Would it extend, for instance, to the expulsion of undesirable residents?—Certainly.

13,496. Dr. Hutton said on page 11 of his evidence that in certain areas the ordinary police are not normally allowed to interfere in tribal cases. Will the Governor have power to continue that practice?—Certainly.

13,497. From page 25 of the same evidence I understood that lawyers are not allowed in these areas without the permission of the Deputy Commissioner. Will he have power to continue that practice?—Yes.

13,498. Would he have power to make regulations to prevent the alienation of land?—Yes.

13,499. And, lastly, would he have power to withdraw from the courts certain cases involving tribal customs?—Yes, by regulation.

13,500. In answer to Major Atlee you said that the Governor would have power to allot funds for the development of the backward tracts. Will that include power to allot funds for education?—Yes, for any purpose that is required.

Earl Winterton.] My Lord Chairman, I do not think there is any question that my ingenuity can possibly suggest that has not already been asked by some other Member of the Committee, so I do not propose to ask the Secretary of State anything.

*Lord Hardinge of Penshurst.*

13,501. I would like to ask the Secretary of State: Does he anticipate that the administration of the backward tracts will be to any extent different from what it is at present? I ask that because I think the administration of these backward tracts at the present moment is, as far as I know, and certainly was when I was in India, very good. I do not want to see it deteriorate?—I do not myself see any reason why, under this plan, it should deteriorate, or should be materially changed.

*Earl of Lytton.*

13,502. I would like to ask the Secretary of State one or two questions regarding the application of these passages to Bengal in particular. In Bengal at the present time there are two excluded areas, Darjeeling and the Chittagong Hill Tracts. I understand from answers already given by the Secretary of State that both of these areas would in future be regarded as partially excluded?—Yes.

13,503. With regard to Darjeeling district, I think that is obviously right, but I am not so well satisfied with regard to the Chittagong Hill Tracts. The Secretary of State has said that his object as far as possible is to carry on the existing system, but at the present moment the Chittagong Hill Tracts is a wholly excluded area, is not it?—Yes.

13,504. I would ask the Secretary of State whether, in fact, the conditions among the tribes of the Chittagong Hill Tracts do not approximate almost exactly to the condition of the tribes in the Assam Hill Tracts which it is proposed to make an excluded area?—We have been guided by the local Government in this matter. We have taken their advice. I do not know whether Sir Malcolm could add any details from his knowledge. (Sir *Malcolm Hailey.*) I am afraid I have very little knowledge of that particular area, if I might suggest this, that the particular question is one for discussion when the Committee sees the suggested schedule—as to whether one area should go into a particular class or not. (Sir *Samuel Hoare.*) It is a fact, as I say, that we have consulted the local government and this is their advice. After Lord Lytton has raised this question I will look into it again.

13,505. May I give you one or two examples of how this system would apply in the Chittagong Hill Tracts if it is only a partially excluded area? I understand that partially excluded areas are to come under the general administration of the Provincial Government?—Yes.

13,506. Presumably they are to have representation in the Provincial Legislature?—Yes.

13,507. Is it not really inconceivable that the Chittagong Hill Tracts, as they are to-day, should elect representatives

to the Bengal Provincial Council?—It would not, of course, follow that they would send representatives to the Bengal Council. That would depend upon the Governor's decision in a matter of that kind.

Mr. *Zafrulla Khan*.] The schedule does not provide for it.

Earl of *Lytton*.

13,508. Then there would be a difference between the position of a partially excluded area and the other parts of the Province in respect of representation?—It need not be so necessarily. It would depend upon the conditions of the Province. It is not necessarily a condition of a partially excluded area that it should be represented in the Provincial Council. It may be a feature of a partially excluded area, but it is not a necessary condition of it and it would rest with the Governor.

13,509. I understood that the only difference between a partially excluded area and the rest of the area of a Province was that in a partially excluded area the Governor was to have a special responsibility?—Yes.

13,510. But in the exercise of that special responsibility do you now suggest that he might omit that area from representation in the Legislature?—Yes; under Section 108 he has full powers.

13,511. If the Secretary of State is going to submit a schedule I can perhaps wait for further discussion of that schedule. I only raise it now because I should like to bring to the Secretary of State's notice the fact that when I was in Bengal and required special expert advice with regard to matters connected with the Chittagong Hill Tracts it was really only from the Assam District that I was able to find an officer who had had experience of tribes of that kind, and although there were officers in the Bengal Civil Service who had spent their time as District Officers in the Chittagong Hill Tracts, they had no experience of the tribal conditions. I came to the conclusion that the conditions of those tribes in those districts were really exactly the same as the conditions of the tribes in the Assam hill districts?—I will certainly put Lord Lytton's criticisms and suggestions to the Governor of

Bengal and later on we can discuss it again.

13,512. It is quite a different problem from that of the Darjeeling district?—I see that, yes.

13,513. Which is, it is true, a hill people who differ very much from the people of Bengal, but the actual administration of the Chittagong Hill Tracts is quite peculiar. They have still a number of chiefs who have certain powers and are recognized as, in some respects, the headmen of the districts—a feature which is not common to any other part of Bengal, and it is not found amongst the Hill people in the Darjeeling District at all. Therefore, I thought it was desirable merely to mention the fact that the case for the inclusion of the Chittagong Hill Tracts as an excluded area seems to me to be worth consideration?—Certainly.

Earl *Peel*.

13,514. I would just like to ask about these officers. Of course, it is understood that rather specially qualified officers are required to deal with the tribes in a backward tract? What I am not quite clear of is what is the range from which the provincial government can draw these officers? You may remember that in the Statutory Commission it was suggested that these tracts should be under a central authority because they would have power over the All-India services. Would the local government or the Governor, in order to get these special officers, be able to draw from officers in other Provinces, or would he have to depend entirely upon those who were specially trained in his own Province for this special work?—The Secretary of State's services, of course, would be available everywhere. In actual practice my advice all goes to show that it is upon local knowledge that the provincial Governor chiefly draws, and it probably is from people in his own Province.

13,515. Then they would tend rather to be the same people who were employed. If he wants to draw upon the services elsewhere, he communicates with the Governor-General?—Yes.

13,516. For the kind of man he wants?—Yes. It will not be a distinct service, those services for the excluded areas:

they will be served by the available personnel in the other services. Our own view is definitely against a small separate service. There is every kind of administrative objection to it, and I think a small service like that would be far less efficient than the present arrangement, in which we are able to draw upon the Secretary of State's services and the other services.

13,517. I suppose they would specialise after a time no doubt in this particular class of work?—I think they will go on as they are now. Most of these people are specialists.

*Archbishop of Canterbury.*

13,518. I have no right to ask him personally because he is not giving evidence, but it would help us upon that matter if Lord Lytton could tell us how he got the officer from Assam. I suppose he must have been an All-India officer and he was administering the Province under the present system. I would like to ask that question through the Secretary of State?—I can answer His Grace's question in a more general way. The Governor could ask for the loan of an official from another Province.

*Earl of Lytton.* As the Secretary of State has said, I got him by reference to the Government of Assam.

*Earl Peel.*

13,519. I was not sure whether that transfer between Provinces would be quite as easy in the future as it is now by reference to the control of the Governor-General over the All-India service. That was the point of my question?—I do not think there ought to be any difference. We are dealing after all with a very small number of officials.

*Sir Austen Chamberlain.*

13,520. Secretary of State, I want to revert for a moment to the case of aboriginals scattered through the Provinces and not located either in a totally excluded or partially excluded area?—Yes.

13,521. If I rightly followed what was said by some other Members of the Committee earlier, I think that some of us feel that we have a rather special responsibility for these people?—Yes.

13,522. And our anxiety is not so much lest the Provincial Government should deliberately refuse them justice as that it should be unaware of their conditions and, therefore, not provide the necessary remedy. Do you think it would be possible to stipulate that the Provincial Government should appoint an officer whose business it would be to inspect and report upon these people? That would bring to light their conditions and needs. We might then more confidently entrust their fate to the Provincial Government?—I agree with Sir Austen's suggestion that the officer should preferably be an officer of the Provincial Government. I think there is great advantage in making him an officer of the Provincial Government. I think he would have more influence on that account. As to whether you should specify in the Constitution Act that an officer of this kind should be presumably appointed everywhere, I am not sure that I could go as far as that. I can imagine that there are certain provinces in which there really would not be work for a man of that kind. I do not know what Sir Malcolm would say. (*Sir Malcolm Hailey.*) We have practically no or very few aboriginals in the United Provinces; they are practically confined to one district. In the Punjab they have, it might be said, really none at all. They have their two backward areas of Lahaul and Spiti which are so out off that there is little power of intervention with them. In Bihar and Orissa they have quite a number of districts in which aboriginals actually preponderate—three—and they are represented very largely in six other districts, and it might be found quite advisable to have some special officer capable of advising the local government in regard to the aboriginals and people of that class where they are largely represented such as Bihar and Orissa, but I am doubtful in my own mind whether a permanent officer of that kind is required, or whether an officer could not perfectly well be appointed to make reports to the local government from time to time. I think it would have to vary therefore in each province—the provision you made on that account. (*Sir Samuel Hoare.*) If I may complete my answer, as I said earlier this morning, I will look into this point again. I put the difficulties on both sides to the Committee.

Marquess of Salisbury.

13,523. It might form a special place in the Governor's instructions?—That is one feature of the question into which I was going to look.

Sir Austen Chamberlain.

13,524. I think I am right in understanding you or Sir Malcolm, or one of the Delegates, previously said that such an officer had been appointed in some cases by the Provincial Government already?—Yes, there is an officer for the depressed classes in the Government of Bombay.

Dr. B. R. Ambedkar.] The backward classes. There was also one in Madras

Sir Austen Chamberlain.

13,525. So the proposal is merely making compulsory on all Provincial Governments where the case arises a provision which the more advanced Provincial Governments have already made?—They have made the provision because the conditions were such as to give work to an officer of that kind. As Sir Malcolm has just said, there are provinces in which there would not be justification for an appointment of that kind.

13,526. There may not be need for a whole time appointment, but what I beg the Secretary of State to consider is whether there is not need for some provision which ensures that the condition of these people shall be examined and reported upon so that an informed public opinion may be brought to bear upon the Legislature?—I will certainly look into all these points.

Sir Hubert Carr.

13,527. May I ask a question with regard to proposals 106 to 109 as to their scope. This morning, we have been discussing their application to backward areas on account of the backward condition of the people. Is it intended that they can be applied if necessary to certain areas; for instance, could they be applied if it were found necessary to a district like Midnapore, because conditions connected with terrorism and crime were such that it was not advisable for the constitution to be allowed to work in its ordinary application?—No: these

provisions deal exclusively with backward areas, and they are not intended to go further than that.

Mr. M. R. Jayaker.

13,528. It is not a weapon in the Government's hands to punish politically troublesome areas?—These provisions are not intended for that purpose. If it were found necessary to make provisions of that kind, they would have to find another place in the White Paper or in the Statute.

Sir Hubert Carr.

13,529. It is not a weapon in the Government's hands to protect well-disposed people in certain areas?—No; these provisions are simply a chapter to deal with one part of the problem. If it were found necessary to deal with another part of the problem, the place would not be here.

Dr. B. R. Ambedkar.

13,530. I want to ask you one or two questions to clear up the financial side of this problem. I want to ask a question, first of all, with regard to financing what are called the partially excluded areas?—Yes.

13,531. I take it that there would be a common budget, the provincial budget, in which the moneys provided for the partially excluded area would also be included?—Yes.

13,532. In that case, the whole budget, of course, would be open to discussion by the Legislature?—Yes, subject to paragraph 109.

13,533. I am coming to that. It is only when the Governor exercises his special responsibility under paragraph 70 that they would go outside the purview of the Legislature? Is not that so?—Yes, and paragraph 109.

13,534. But ordinarily they would be part of the provincial budget?—Yes.

13,535. I want to ask a similar question with regard to the wholly excluded areas. I find that the special responsibility of the Governor under paragraph 70 (f), is confined to partially excluded areas only?—Yes.

13,536. That means that for the administration of the wholly excluded areas

the Governor could not draw upon the provincial funds?—Dr. Ambedkar's very acute mind has discovered a gap in the White Paper. That is so.

13,537. He could not draw upon them?—As drafted he could not draw upon the provincial funds. It is an omission that we propose to set right in any final draft.

13,538. Another paragraph is 49 to which I also want to draw your attention in this connection. There subclause (v) says that the expenditure required for excluded areas shall be the special responsibility of the Governor-General?—Yes.

13,539. Do I take it that in the administration of the wholly excluded area the Governor, who presumably would be the agent of the Governor-General, would have to depend upon such moneys as may be supplied to him by the Governor-General in the exercise of his special responsibility?—No; the Governor himself will ask for the money from the province.

13,540. So you do propose to amend the provision dealing with the special responsibilities of the Governor to enable him to draw upon provincial funds for the administration of the wholly excluded areas also?—Yes.

Mr. M. R. Jayaker.] Does it not now fall under paragraph 96, subparagraph (b): "The Governor will cause a statement of the estimated revenues", etc., and then you have given power "to specify separately those additional proposals (if any), whether under the votable or non-votable heads, which the Governor regards as necessary for the fulfilment of any of his 'special responsibilities.'" Special responsibilities include expenditure to be spent on the partially excluded areas.

Dr. B. R. Ambedkar.

13,541. I am talking about wholly excluded areas?—The point Dr. Ambedkar has raised deals with totally excluded areas and, by an error in drafting (it is nothing more than that) it would appear that the Provincial Governor, while he could draw upon the provincial funds for partially excluded areas, could not draw upon the pro-

vincial funds for the totally excluded areas. That is an omission in drafting.

Mr. N. M. Joshi.

13,542. Might I ask a general question about the merit or demerit of the method which you have proposed of protecting the backward people and the method of protecting their interests by treating them as a minority. I want to ask you what is the difference between the two methods—the method of protecting by giving the Governor special power to protect a minority and the method which you have adopted to protect the backward people?—We feel in the case of the backward people that they do need some further and more definite protection. That is the reason why we have got these provisions 106 to 109. We feel that they are so far away from the ordinary political conditions in India that they really are in a different category, say, to Members of the great religious communities of India.

13,543. I want to suggest to you, Secretary of State, that there are two kinds of protection. The first is from the politicians, as you say?—Yes.

13,544. The second protection is from an autocrat?—Yes.

13,545. I am not using that word in an offensive sense. In the case of the method which you have followed in the case of minorities, there is protection both ways; the minority is protected from the majority of the politicians by giving the Governor special powers and the minority also is protected against an autocratic use of power by any officer or by the Governors because the Legislature can deal with the questions of the minorities. In the method which you have followed, there is no protection against the autocratic use of the powers given to the officers who may be appointed to those districts. I, therefore, want to know from you whether you do not think that that method followed in the case of the minorities gives protection both ways and therefore should be adopted in the case of these tribes also?—We do feel very definitely that we have to take into account experience. All experience goes to show that these areas have on the whole been sympathetically administered. It also goes to show that

it is very dangerous to make sudden changes in them. Judged, therefore, by the past it looks as if the aborigines themselves will be both happier and safer if the same kind of arrangement still continues. I hope I have said enough this morning to show that I do regard these backward areas as a very definite exception in the Indian picture, and as an exception that must be dealt with by exceptional methods. We think, judged by our experience, that this is the best way of dealing with them, and as soon as you bring in the ordinary checks of Parliament and politics, which may be very valuable and applicable in many other directions, it really is going to do harm in the long run to the tribes themselves.

13,546. I am not making any allegations against any officer, Secretary of State?—No; I know you are not.

13,547. And I am prepared to admit with you that on the whole the officers are sympathetic but, at the same time, Dr. Hutton himself in his Memorandum has given instances of cases where there was a danger of the interests of these people being sacrificed. He mentions this one in his Memorandum: "Another

instance of the harm that can be done by an inexperienced officer and of the care that has to be taken in administering these areas may be taken from Assam, where a range of hills owned by the independent Najas was regarded as important on account of the presence of suppositious oil or coal." Where big interests are concerned, the interests of the backward tribes may sometimes be sacrificed. He gives another instance?—But, Mr. Joshi, however, good those instances may be, I still fail to see how political intervention would have been likely to make things better. I think it might very well have made things worse.

13,548. I will tell you how?—Dr. Hutton, so I am informed—unfortunately I could not be at the Meeting—did not at all draw the conclusion which Mr. Joshi has just drawn from it. The conclusion he drew was to exclude these areas altogether.

Mr. N. M. Joshi.] It is true Dr. Hutton believes in autoeracy and, therefore, he wants exclusion.

Chairman.] Mr. Joshi, I propose to adjourn now until half past two o'clock.

18th October 1933.

PRESENT :

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Lytton.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.

Lord Hutchison of Montrose.  
Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Sir Joseph Nall.  
Miss Pickford.  
Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.



## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Mr. Zafarulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

Mr. N. M. Joshi.

13,692. Secretary of State, yesterday, you stated in reply to my question that you want to give the aboriginal tribes further and more definite protection. I am not asking you questions in order that the protection shall be whittled down, but my anxiety is that there should be more protection than you are giving. In connection with that, I want to ask you a question as regards paragraph 109 ?—(Sir Samuel Hoare.) Yes.

13,693. In that paragraph, you are allowing the Governor at his discretion to disallow any resolutions or questions dealing with the administration of a partially excluded area. I want to ask you whether this provision will not reduce the protection instead of increasing the protection ?—No. I do not take that view. I take the view that unless there is a safeguard of this kind debates and resolutions may arise in a Provincial Chamber that would stir up a great deal of trouble, or that might stir up a great deal of trouble, and that might do a great deal of harm in a backward area.

13,694. But did not the Legislature contemplate this as one of the means by which injustices done by people would be redressed, and from that point of view, when you are establishing an autoeratic institution in the districts, does it not reduce the protection when no questions could be asked and no resolution could be discussed regarding the actions of the Executive ?—In the partially excluded areas, Mr. Joshi will remember that it is not an autoeratic administration. It is the ordinary Provincial administration acting, however, with certain safeguards imposed upon it by the Governor.

13,695. Yes, but the Governor will have the power either to apply or not to apply the particular piece of legislation ?—Yes. I regard that as a very necessary safeguard.

13,696. It is a necessary safeguard but at the same time when the Executive is not responsible to the Legislature, when you prevent questions being asked as regards the actions of the Executive and prevent resolutions being discussed as regards the actions of the Executive, you are reducing protection ?—No, I do not think so. I am afraid, Mr. Joshi and I do not agree. I base my view upon the very strong advice of the experts who have actually been dealing with these people in these backward tracts. They think that some safeguard of this kind is essential, otherwise you may get resolutions moved and discussions taking place that would stir up all kinds of trouble in these very exceptional districts.

13,697. As regards the excluded areas, you prohibit discussion altogether. As regards these areas, I want to know whether the protection is not reduced by making the provision that there shall be no discussion ?—I did not quite hear the last part of your question.

13,698. As regards the excluded areas, there can be no discussion even with the permission of the Governor or of the Governor-General ?—Yes ; that is so. We are dealing with a very exceptional case in our Proposals—only one single case—and both upon the grounds of merit and also upon the grounds of practicability we think this is the best proposal. As to the grounds of practicability, there is this fact that the Governor would have

no official minister who could answer interpolations of this kind about a totally excluded area. In the case of the partially excluded areas, of course, he has the Provincial administrators and the Provincial administration, but in the case of the totally excluded areas he would have no representative in the Chamber to deal with questions of this kind.

13,699. As regards the protection of these people, the need for the protection of these people, as I have stated in my questions so far, is against the autocratic actions of the Executive or the arbitrary actions of the autocratic Executive and secondly they also need protection against these people being exploited by others. There was a mention of the moneylenders exploiting them; there is also a possibility of the capitalist and the employers exploiting them. My question to you is this, that if you prohibit discussions and questions as regards the treatment given by employers to their employees, who in some industries are people belonging to the aboriginal tribes, you reduce the protection instead of increasing that protection?—I would prefer really, as I say, in these very exceptional cases, to rely upon the people on the spot. I think they are much more likely to be sympathetic than politicians, however excellent those politicians may be, outside.

13,700. Secretary of State, I should draw your attention to a few quotations from the Report of the Royal Commission on Indian Labour. The Royal Commission on page 115 says: "The main coal-fields lie in or adjacent to areas chiefly inhabited by aboriginal tribes. From these tribes the labour force was first drawn and they still supply the bulk of the workers." So, in the coalmining industry the large, proportion of the workers comes from the aboriginal tribes?—What particular areas is Mr. Joshi dealing with?

Sir Hari Singh Gour.

13,701. The Jharua Coalfields?—Where?

Mr. N. M. Joshi.

13,702. Some are in Bihar, some are in the Central Provinces, but mainly in

Bihar and Bengal?—If so, of course, Mr. Joshi's question does not really apply. Those areas are partially excluded areas, not totally excluded areas. All discussion would not be invariably barred.

13,703. I am dealing with your prohibition to ask questions and prohibition of discussions?—There is not a prohibition in areas of that kind.

13,704. Some of these areas will be partially excluded areas?—Yes, and in the case of partially excluded areas all that is necessary is to get the permission of the Governor.

Sir Hari Singh Gour.

13,705. It is the other way about; it is not a question of getting the permission of the Governor. He could stop it?—I beg your pardon; yes, that is so.

Mr. N. M. Joshi.

13,706. The fact is that the protection you are proposing is less because the permission of the Governor must be obtained?—He can stop the discussion if he thinks the discussion is harmful.

13,707. That is exactly what I am suggesting to you: that, instead of increasing the protection, you are reducing the protection. Now as regards the other area of Assam, from the Report of the Royal Commission on the Tea Estates I shall read one or two small quotations. On page 357 of that Report the Royal Commission say: "About 126,000 labourers are employed, most of whom are aboriginals from Chota-Nagpur and the Santal Parganas in the province of Bihar and Orissa." That is one part of the tea estates. On page 359 the Royal Commission say: "At present the most important recruiting area for both valleys is Chota Nagpur and the Santal Parganas, whose aboriginal population is preferred for work on the tea gardens." Here you will notice that these aboriginal people are preferred by the employers because they are unable to protect themselves. Now in the case of such people is it not better on the whole that there should be greater protection than less protection?—Here again I should like to look into the details. I should be surprised if these Tea Estates were in the totally excluded area of Assam. If

they are not in the area of total exclusion, then it does not seem to me that the question has any bearing upon the point.

13,708. Now as regards the danger of land being alienated, as there is a danger of land being taken by money-lenders, there is also a danger of land being taken by big capitalists like the tea planters and the mining people. Is it not possible for you, instead of leaving it to the Governor and the District Officer, to put down in the Constitution itself or in some way provide that land belonging to the aboriginal people should not be taken away at all, because if you leave the protection to the Governors it is quite possible that the protection may not be good enough against big capitalists?—All I can say is that we have consulted the men who have been actually dealing with this problem on the spot and they support this kind of protection. I should like to see every kind of practicable proposal carried into effect for preventing these backward people being exploited. I am not sure, however, whether you could in actual practice carry into effect a very general proposal such as Mr. Joshi has just suggested.

13,709. I shall put before you for your consideration one or two proposals. My first proposal is that you should leave the Legislatures free to ask questions and to have discussions. That is one proposal. Then my second proposal is that you should give these aboriginal tribes not only representation according to their population but weightage in the representation. You have given weightage in representation to minorities which are much more powerful than the aboriginal tribes, while in the case of the aboriginal tribes you have not given representation even according to the population basis?—No; and it is just because of that, Mr. Joshi, that we are proposing, as an alternative, this other method of dealing with them. The reason is that we feel that they are so distinct from the other population of India that we must give them special treatment. We feel that these very backward people really cannot gain anything at all by a small representation in a Legislature about which they might understand nothing at all.

13,710. In the first place, I do not know why that representation should be small?—Call it big. I do not mind whether you call it small or big. I would say that any representation of these very backward people would be of very little use to them.

13,711. May I ask whether these backward people will not be subject, either to Provincial or Federal taxation?—In the totally excluded areas the administration will be the Governor's administration.

13,712. But they will not be free from either the taxation of the Federal Government or the Provincial Government. How can they be free from customs taxation?—That is the position now. But does Mr. Joshi suggest really that head hunters living in the hill tracts of Assam could take an intelligent part in a Budget discussion about indirect taxation?

13,713. Secretary of State, you may consider that they are head hunters. I know some of these aboriginal tribes and I know they are not head hunters. They can be well educated and they can be very well civilized, and I am quite sure that if you give them representation they will be able to find representatives. You are not excluding from the Federal Legislature only the head hunters of Assam; you are excluding all aboriginal tribes?—No, that is not the position. In the totally excluded areas it is so. In the partially excluded areas it rests with the Governor how far representation and all that goes with it is applicable.

13,714. No, in the Federal Legislature you have not provided any representation for the aboriginal tribes?—I beg your pardon; that is so; because we felt that no representation that we could give to these areas would really be effective. All that would happen would be to draw them into a political machine that might very well crush them.

13,715. I do not know how any Legislature can crush them when the Governor has special powers to protect them. Any representative of the aboriginal tribes will certainly express himself as regards how the taxation affects his community?—I wonder very much how in actual practice you could find one, two, three,

or four people to represent in a Federal Legislature all these very different tribes and communities, and even if they could represent them, whether they would make their voice effectively heard.

13,716. The same thing used to be said about what are called the Untouchables some time ago : that they would not be able to provide any representatives. If you put down in the Constitution no representation at all for the aboriginal tribes the same condition will continue, but if you give them representation it is quite possible that as in the case of the Untouchables we do not feel any difficulty now, in the case of the aboriginal tribes there will be no difficulty as regards their representation?—Of course it is very difficult to say what it is they require and what it is they do not require themselves, but all our information goes to show that they do not require this kind of representation, and I think Dr. Hutton himself made the point in his Memorandum and the evidence he gave the other day.

13,717. May I suggest to you that these aboriginal tribes require protection against the autocratic officers, against moneylenders, and against capitalists? They also require protection from anthropologists who want these specimens to be preserved?—And they also require safeguards from ignorant politicians.

13,718. That you are providing against—you are providing against the ignorant politicians. May I ask you another question? Yesterday Mr. Seymour Cocks asked you a question about the power of deportation and you said that the District Officers will possess the power of deporting. May I ask in what form this power of the deportation will be expressed? Will it be expressed so that the District Officers will be able to deport the moneylenders and people who exploit, or will it be a general power of deporting anybody?—It will be a general power of the Governor to make regulations for this and for other purposes connected with his special responsibility to the excluded area.

13,719. Might I draw your attention to the fact as stated in the quotation which I gave you from the Report of the Royal Commission, that many of the industries are situated near the aboriginal

areas, and if in those areas there are some strikes by workers there is a great likelihood of people who take part in those strikes being deported. What is the protection against such action?—The protection is really the commonsense and the good faith of the Governor not to abuse his power. We have no ulterior motive in our minds to use these powers as strike-breaking powers.

13,720. I am not suggesting that there are any ulterior motives in your mind, but I want to know whether there is any protection against the wrong use of autocratic powers which generally exist when Legislatures cannot discuss matters?—I would not say that is the only check upon the misuse of powers. There is the check of Parliament, there is the check of Whitehall, and certainly there are other checks. There is the check of public opinion in the gross misuse of powers.

13,721. How would public opinion be expressed if the Legislatures cannot discuss matters?—There is such a thing as the Press.

Dr. B. R. Ambedkar.

13,722. Might I ask just one question arising out of the questions put by Mr. Joshi. I just want to draw the attention of the Secretary of State to a difficulty which I feel. Under paragraph 109 as drafted the distinction made between the Excluded Area and the Partially Excluded Area is on the basis that in the Partially Excluded Area discussion is possible or the Governor has the power to disallow it, while in the case of an Excluded Area the Governor is prohibited from allowing any discussion. My difficulty is this : Yesterday, I think in answer to a question by Major Atlee, you stated, Secretary of State, that the contribution which the Centre was bound to make to Assam in order to cover the deficit arising out of the Excluded Area there was not to be an ear-marked amount but was to be part of the general revenues of the Province of Assam. I suppose I am correct in saying that that was what you stated?—I think I left the question somewhat open as to whether it should be a specific grant or whether it should be merged in the general grant.

13,723. The impression that I formed was that you said you did not think that it would be an ear-marked amount?—No. I think what I said, or anyhow what I intended to say, was that in the figures that we had been discussing we had assumed that it would be part of the general fund, but as to whether that was the best way of dealing with it I had an open mind.

13,724. Very well. I will take another aspect of the thing. In answer to a question which I put you stated that so far as the financing of the Excluded Area was concerned you were going to rectify the omission in the White Paper and allow the Governor of the Province to draw upon the general fund of the Province of Assam for the expenditure that he was likely to incur under the Excluded Area?—Yes.

13,725. The difficulty that I feel is this, that if the Governor is to have the power to draw money from the Provincial Fund of Assam in order to carry on that administration in the Excluded Area, is it consistent with this provision in paragraph 109 that the Legislature should be altogether prohibited from discussing the affairs of the Excluded Area which is supposed to provide that money?—I think Dr. Ambedkar does raise a difficult case. It is not a case in which a very large sum is involved, for this reason, that by far the greater part of the expenditure upon the Totally Excluded Area of Assam will be found from Federal funds, but I think it may be assumed that there will be a sum in addition to that needed.

13,726. As you said yesterday, in all these areas where there will be Partially Excluded Areas the Budget would be a common Budget, unless, of course, the Governor certified an extra amount under his extra responsibility, in which case the Budget as a whole would be placed before the Legislature and open to discussion. I do not see how the difficulty would be got over?—We had considered the advantage in a case of that kind of proceeding, say, by a contract budget over a period of years. What I am anxious to avoid are frequent discussions.

13,727. I suppose the purpose could be best served by having a common provision for both, prohibiting discussion

and allowing the Governor the power to prohibit it or disallow it, whichever he thought necessary?—It was pressed upon us very strongly by the people working in these tracts that there was a great advantage in excluding discussions in the case of the Totally Excluded Areas, but I have always seen the difficulty of the expenditure in Assam from provincial funds. I think the Committee and the Delegates might consider whether supposing there was a contract budget for a period of years, when the contract was renewed there might then be a discussion; but even that (I say it so that the Committee should know the whole position) is contrary to the views of a good many of the experts.

13,728. But I suppose the purpose of the experts and the purpose that you have in view would be very well served by having this power of the Governor to allow a resolution and discussion?—What we wanted to avoid was the Governor constantly having to refuse discussions of this kind. It would put him into a difficult position, and we do not contemplate in the case of Totally Excluded Areas that there would be discussions, and we do not want to take any action that would appear to permit discussions that we think would be harmful to the area; that is what it comes to.

Dr. B. R. Ambedkar.] I was only suggesting that the Governor's power would be adequate protection against that. That is all I ask.

Lieut.-Colonel Sir H. Gidney.

13,729. My Lord Chairman, I have two questions only that I desire to ask the Secretary of State. The first question possibly may not arise or be in order, and the Secretary of State will correct me. In the interpretation of the Partially Excluded or Excluded Areas, so far as the exclusion is concerned, there are other Excluded Areas of India from legislation, such as the Ceded Areas. They do not come into this at all, do they?—They do not come into this at all.

13,730. The next question I want to ask you, Secretary of State, is this: Have you considered what legislation or how legislation is going to be applied to these areas, considering the fact that

that they are denied any political voice?—I think Sir Henry Gidney has one or two cases in mind that occur to some of us, but it really does not come into this chapter at all.

13,731. You promised me that you would make inquiries, and I know you are making inquiries. I hope the inquiries will result in those areas being given a voice in the Legislature of the country. They are to-day precluded from any legislative views?—I think if Sir Henry would raise a question of that kind at some period in the discussions, I would then deal with it.

13,732. Very well. The second point is regarding the excluded and partially excluded areas. I do not talk as an expert in the matter, but I have spent nearly seven years of my service in those areas, and I am prepared to state that in the totally excluded areas from my experience they are really not intellectually capable of expressing any views on a political matter, and they are not concerned in expressing any views on such matters. In those areas, as Mr. Joshi has stressed (and Dr. Ambedkar has pointed out ambiguity which might be got over), might I suggest that use might be made of that very noble army of Britishers, the missionaries, I mean, who have established themselves in these areas, and who really know more about these areas than any district officer; that they might be given the option of representing them?—Of course, we can consider a point of that kind, but I still think myself, subject to our further consideration, that it is really better frankly to accept the fact that these are exceptional areas, and they are not susceptible to the kind of treatment that the rest of India is susceptible to, and to give them a representation, even although the representatives might be excellent people like the missionaries, would really be a somewhat incongruous affair, and it might not help them as much as our proposals help them in frankly treating them as an exceptional area.

Lieut.-Colonel Sir H. Gidney.] I will tell you why I stress the point. In my years of service in the areas, I served in the Garo Hills, the Naga Hills and the Khasia and Jaintia Hills, and I was in the head hunting expedition of

1913 when I almost lost my own head. As a doctor, I have toured the foot of the Bhutan and Nepal Hills, and in all these areas I did find occasions when the villagers as a body opposed orders issued to them by their Ghamharas (Ghamharas being a synonymous name for Patels or Lambhdars in the villages in other Provinces), and it was in these areas where I met life and death as a surgeon that I got into close touch with these aboriginal tribes as well as with that great army of splendid men, the missionaries, and I was particularly struck with the great confidence and the great trust that these aboriginals in the villages placed in these missionaries, and I thought that if any representation were to be given to them, this might be a means by which we could give it.

Archbishop of Canterbury.

13,733. Before you leave that, "Sir Henry, may I ask whether it is not the case (I think it is) that in some cases already in the legislature, such persons as those to whom Sir Henry has alluded have represented these special tribes?—Yes, there is a case in Assam, but I think the case is the case of the representation of an area that would not be totally excluded, but partially excluded. I will look it up.

Mr. Butler.] It is referred to on page 161 of Volume 1 of the Report of the Statutory Commission. A Welsh missionary represented the area.

Lieut.-Colonel Sir H. Gidney.

13,734. Carrying the matter a little further and giving my attention to the partially excluded areas with which I have been very familiar, I do think there is a growing sense of responsibility among these people, and I do think that education, although of a primary nature, has spread very largely owing to the work of the missionaries, and the hospitals there, and I think myself that these partially excluded areas could with equal benefit, as has already been allowed to the depressed classes, be given something in the shape of some representation in the legislatures of these partially excluded areas?—Yes: we do provide representation in the provincial legislatures for these districts.

13,735. I think that is quite enough, myself?—Yes. I am reminded that there is actually a provision for 21 seats in the various provincial legislatures.

Lieut.-Colonel Sir H. Gidney.] Thank you. I have no more questions.

Mr. M. R. Jayaker.

13,736. Secretary of State, the whole assumption of this chapter is this, that the Governor, who will be a public man from England and the official on the spot, will be able to give these uncivilised people greater protection than public opinion through the legislature?—That is the assumption. Assuming that there is no racial distinction between Indian and European administrators.

13,737. I am not making any?—No.

13,738. Is it wise not to rely upon the sense of the modern Indian as regards his obligation to bring up these communities? Is it wise to ignore that sense altogether? I quite see your difficulty that they should not be submitted to legislation for which they are not ripe. I agree up to a certain point, but do you think you are right in taking these poor people entirely out of the influence of the legislature and public criticism to the extent of not even allowing questions under paragraph 109?—It is only questions in the one area totally excluded.

13,739. I am speaking of that area. My fear is that you may, in course of time, stagnate public criticism, and it will not be able to approach those people, and they will continue to remain for a long time as exhibits of what civilisation used to be at one time in India. The only safeguard is to allow the light of public criticism to bear upon these people?—My difficulty is that they are so remote from the general standard of civilisation in India that, in actual practice, bringing to bear upon them the light of public opinion is really going to stir up a great amount of trouble, and very likely do them an injustice?

13,740. That is so. Then the proper protection is that which you have provided in paragraph 108, that legislation which will normally apply in other parts of the Province will not apply unless the Governor thinks fit, but stop there. Why remove them even from the category of

asking questions as you have done in paragraph 109? You have gone even to this length, that the Governor cannot make rules, that subject to his sanction, questions may be asked and discussion take place. That is a very drastic proposal, if I may say so?—We have felt that we must go very cautiously in dealing with these aboriginals, and it is in the interests of caution and their own peace and security that we make what I admit is a drastic proposal, but it is a proposal a good deal less drastic than the proposal made by Dr. Hutton in his evidence, namely, that all discussion should be barred, not only in the totally excluded areas but in the partially excluded areas as well.

13,741. Dr. Hutton is an expert, and I am always extremely careful about accepting experts at their words, because all experts up to a certain point are blind men. Their value lies in being able to see one point. But may I point out that what you are proposing in paragraph 109 is more drastic than what you are proposing in paragraph 52. In paragraph 52 you have given power to the Governor-General in sub-clause (b) on page 51: "prohibiting, save with the prior consent of the Governor-General at his discretion, the discussion of or the asking of questions on" then: "matters connected with any Indian State other than matters accepted by the ruler of the State in his Instrument of Accession as being Federal subjects; or (ii) any action of the Governor-General taken in his discretion in his relationship with a Governor; or (iii) any matter affecting relations between His Majesty or the Governor-General and any foreign Prince or State." Even these questions can be discussed with the approval and sanction of the Governor-General, but if your paragraph 109 is to be followed, this is the one subject where the Governor has no power to allow questions or discussion?—Yes.

13,742. It is certainly a more drastic proposal than the case of a foreign Prince or State which can only be discussed with the approval of the Governor-General, but in the legislature we cannot ask any question or discuss any matter relating to the totally excluded areas. That means that they get a much higher

status than a foreign Prince does, so far as the asking of questions is concerned? —I think on the whole they deserve a higher status, because they are less able to defend themselves.

*Archbishop of Canterbury.*

13,743. May I, arising from that, return to what I ventured on a previous occasion to urge, that this paragraph 109 is needlessly drastic. I suppose the object of legislatures such as these is to educate people in problems vitally affecting the affairs of their country. It must be of great importance to legislatures to understand and know what is going on with the very interesting and responsible problem of these aboriginal tribes. It seems to me most natural that sometimes a question should be asked about them so long as the discretion is given to the Governor that if he thinks it is a highly inappropriate question, or would be likely to prejudice these excluded areas, he should prohibit it, but paragraph 109 does not even allow the Governor to permit a question. I merely ask whether (it is really in view of the importance of the problem, and, therefore, the importance of the Indian legislature having opportunities of knowing about it) so long as you safeguard the right of the Governor to object and prohibit, you should not insist that he can under no circumstances permit even a question? —It is not a question, His Grace will see, of excluded areas. In our proposal it is a case of only one excluded area, namely, Assam. In the case of partially excluded areas discussion is permissible.

13,744. Yes?—We are dealing really with one very exceptional case, and in that very exceptional case, I feel some hesitation in ignoring the very strong representations of the officials who have actually been dealing with problems of this kind. It is not that I am not conscious of the strength of the argument on the other side; I am; but I am very nervous of taking an unwise step that is really going to stir up trouble in what are really almost totally uncivilised areas—some of these areas.

*Mr. Zafulla Khan.*

13,745. An anomaly of this is that their nine representatives on the Assam

Legislative Council will be able to discuss every question excepting their own backward areas, and they will be able to take part in all questions concerning Assam except the backward tract for which they are going to be the representatives in the Council?—That is so.

13,746. Is not that anomalous?—It is anomalous, and many of these very difficult questions are bound to be anomalous. It is to avoid the risk on the other side, namely, this: Here we are dealing with very uncivilised people; I do not know how many expeditions there have not been in recent years for stopping head-hunting, and so on. I am nervous of opening the door to a discussion that may set the whole place in a blaze.

13,747. What is the point in giving these backward tracts representation in the Legislature? What are those representatives instructed to do?—We are not giving representation. We are constantly confusing two different things, namely, the totally and the partially excluded areas. We are not contemplating representation from the totally excluded areas.

13,748. I am mistaken. Do I understand that these nine seats reserved for the backward tracts will give representation to the partially excluded areas in Assam?—Yes.

*Mr. M. R. Jayaker.*

13,749. Do not you think the result of your proposals will be, as regards these agencies which are, at the present moment, carried on, some by Indian politicians and some by Indian reformers, for the purpose of improving these people gradually, that their influence will be considerably curtailed by this sort of isolation of these areas from the benefits of public criticism?—I do not think so. So far as I know no obstacle is being put in their way now; indeed, I imagine every encouragement is given to them. I see no reason why there should be a change.

13,750. Nobody would take any interest in these matters, because they are out of the purview of the Legislature?—I do not think so. I do not think people take no interest in anything if it does not come



within the purview of the House of Commons here; in fact, I think rather the contrary is the rule.

13,751. May I ask you one or two questions about paragraph 106. You explained yesterday, in reply to some question, that you proposed to annex a list to the Constitution Act?—Yes.

Mr. M. R. Jayaker.] Will that be a final list or will that list be added to.

Lieut.-Colonel Sir H. Gidney.

13,752. Or subtracted from?—It would be a list no doubt with a power by Order in Council, or whatever might be the machinery, to make alterations, but we should assume that that power would be exercised for diminishing the areas and not for increasing the areas, or transferring areas from one category to another.

Mr. M. R. Jayaker.

13,753. That is what I wanted to know. You are contemplating that in course of time what is a totally excluded area will pass into the list of a partially excluded area and what is a partially excluded area will pass into the list of the reformed scheme Provinces. You are contemplating such a change in course of time?—Yes. I think that would be generally true provided that when one uses the expression "in course of time," one does not assume it would be a short time in certain cases.

13,754. I am not assuming that. Do you contemplate any form of machinery by which the change shall take place, that is to say, by which a totally excluded area will pass into the category of a partially excluded area and a partially excluded area will pass into the scheme of the Provinces. Are you going to provide a periodical enquiry by Parliament or a report by the Governor?—I think a periodical enquiry would be objectionable and risky. I think it is much better to leave it to the Governor and his staff and to proceed by Order in Council. After all, we are dealing with comparatively small areas compared with the great size of India. This is not a big problem.

13,755. What I want to know is, who is to take the initiative? When you allow the Legislature to pass a resolution

recommending that a certain Partially Excluded Area be now absorbed into the Province, who is to take the initiative?—I think that might easily happen. If in the cause of development such a situation arose, then I think there would be such a resolution in the Legislature.

13,756. Not about a Totally Excluded Area?—No. In the case of the Totally Excluded Area I agree there is a difficulty; there is this block at present.

13,757. Supposing that time is reached, whose business will it be to take the initiative?—It would be the business of the Governor-General making representations and the procedure being by Order in Council. That is our proposal. I think Mr. Jayaker will agree that in the case of the Assam Tracts that kind of contingency looks as if it is a long way off.

13,758. I do not know enough of the Assam Tracts to say that. I am only asking on the question of principle. There must be some machinery by which it could be done. Do you see many difficulties in a Parliamentary Inquiry periodically?—I do not like these periodic inquiries, for this reason: They stir up a great deal of agitation. That is just what one wishes to avoid, particularly with these very inflammable areas; and the trouble with a periodic Inquiry is that as soon as you say you are going to have a periodic Inquiry immediate agitation starts to have it at once.

Sardar Buta Singh.

13,759. May I know if any part of an Excluded Area has so far been excluded from that category and become a Partially Excluded Area?—Yes; indeed Sir Malcolm tells me that that has happened in certain cases.

Mr. M. R. Jayaker.

13,760. I am going to ask you one or two questions about Proposal No. 107, Sir Samuel. I understood from yesterday's discussion that as regards the Partially Excluded Areas they will be normally subject to the administration of the Province under the Minister?—Yes.

13,761. Subject to an overriding power in the Governor to interfere?—Yes.

13,762. What kind of cases do you have in view where the Governor will interfere? I imagine they will not be confined to those specific cases in paragraph 70?—No. The kind of case (I do not know whether it is a good one or a bad one) that comes to my mind is this, that in certain of these areas law and order may be in the hands of their own village headman. In that case the Governor would withdraw those areas from the ordinary police administration of the Province.

13,763. But you will have in the Instrument of Instructions to the Governor some indication as to the kind of cases in which he shall interfere?—I had not contemplated any specific reference to this point in the Instrument of Instructions. You see, Mr. Jayaker, it occurs to me it would be difficult to put anything in the Instrument of Instructions specifically about this for this reason, that the Partially Excluded Areas do differ very much one from the other, and what might be quite suitable in one would be not at all suitable in another.

*Dr. Shafa'at Ahmad Khan.*

13,764. There is a provision in the recent Governors' Instrument of Instructions regarding the Governor's power of interference?—Yes, we could look into that point. I do not know whether it would meet Mr. Jayaker's point. I do not think it would. That is a more general point.

*Mr. M. R. Jayaker.*

13,765. But that would be a wider power of interference than in paragraph 70, I imagine. It will not be confined to any specific topic: the Governor can interfere on any occasion?—Yes, in the partially excluded areas.

13,766. Therefore, I thought it would be better if something could be said in the Instrument of Instructions as regards what special care the Governor is to take. Take the exploitation of these poor ignorant people by Indian and European exploiters taking mining rights by giving them just a few trinkets, for instance, or the labour-employing agencies which often come from foreign States, from the Fiji Islands—all these people come in and trade amongst these ignorant people, and

by taking advantage of their ignorance secure their employment. Now will you state something in the Instrument of Instructions being within the special care of the Governor regarding the protection of these ignorant people from such ravages?—Yes, I think we might certainly consider a suggestion of that kind. Indeed, it would be in accordance with what is generally the present practice. I think it is the present practice to call the attention of the Governors to their responsibilities for these areas in the existing Instructions.

13,767. That is what I was suggesting?—Yes; I think we might well look into that point and see whether we could make the Instructions to the Governor applicable to the proposals in the Constitution Act.

13,768. Now there are only one or two more points I want to put to you. I understood yesterday from your replies that in the case of the partially excluded areas there will be no separate Budget for those areas?—That is so.

13,769. Supposing, for instance, there are 100 square miles excluded in a certain Province, the Budget for the 100 square miles will be included in the general Budget of the Province?—Yes, that is so.

13,770. Supposing, for instance, when that Budget is being discussed (I am pointing out a difficulty that is troubling me) a Member gets up and moves a token cut in a certain item as a means of bringing public opinion to hear by way of condemnation of certain acts that have happened there, then the Governor-General refuses to allow him to make that resolution; that is under Proposal 109. Supposing a token cut is moved in the course of the Budget discussion, will the Governor have power to refuse any discussion of it under 109?—Yes, he would have power to do that.

13,771. It would be very hard on the Legislative Council to ask money from it and not allow any discussion upon it or any question to be raised with regard to it?—We had assumed that it would depend upon the circumstances of the case, and if it looked like a *bona fide* motion for a discussion no doubt the Governor would allow it. I am not sure whether Mr. Jayaker is dealing with the

partially excluded areas or with the totally excluded areas.

13,772. I am speaking of the partially excluded areas?—The Governor would have the power either to allow it or to disallow it.

13,773. Normally, questions would be allowed?—Yes, perhaps.

13,774. If the Governor disallowed a question which arises in the course of the Budget discussion it would seem extraordinary that the money is to be had from the Council and no discussion is allowed. If, on the other hand, he allows questions which come up in the course of the Budget discussion, then Proposal 109 would be avoided on every question?—The Budget, of course, does only come once a year, and that means that a discussion of this kind would only take place once a year; it would not be constantly coming up in the Chamber.

13,775. But many grievances come up in the course of one year, speaking of the Indian Legislature?—Yes.

13,776. I mean, your Proposal wants money from the Legislature, but it will not allow the Legislature to discuss questions relating to those areas. That is the trouble which I feel?—I think we must all of us weigh up the arguments on both sides. They are strong arguments on both sides, and the Committee and the Delegates must give their minds to them both.

*Sir Austen Chamberlain.*

13,777. May I interpose a question? Do I understand that the money required for the partially excluded areas would be a voted service. I had understood the Secretary of State to say on the last occasion that the money needed would be non-votable?—It would be voted, but the Governor could insert it in the Budget if it was not voted. If the Chamber refuses to vote it the Governor would then add it.

*Mr. M. R. Jayaker.*

13,778. That is under Proposal 96?—That is under Proposal 96. The difficulty Sir Austen will see in making it non-votable is that in a partially excluded area it really is a part of the general Provincial expenditure.

*Sir Austen Chamberlain.*

13,779. May I put one further question? Turn to the totally excluded area?—In the case of the totally excluded area the administration is not the ordinary Provincial administration. On that account it is easy to keep the two accounts separate. In the case of the totally excluded area it would be non-votable.

13,780. And could not under any circumstances, therefore, appear in a form which would give rise to discussion on the Budget?—No, that is so.

*Marquess of Salisbury.*

13,781. Might I just put a question upon the Secretary of State's answer, about the partially excluded areas? If it is voted primarily by the Legislature it would not be possible for the Governor to forbid discussion, because it would be the very elements of the vote?—Under Proposal 109 he could stop discussion.

13,782. How could the Legislature vote the money unless they discussed what purposes it was going to be voted for?—The discussion could be stopped upon that particular incident. Presumably, if the procedure is like our own procedure here, somebody would make a motion for the reduction of a vote in order to call attention to a particular bit of administration in the partially excluded area. Under Proposal 109 the Governor could stop that motion.

*Lord Rankellour.*

13,783. And does not exactly the same difficulty arise in the Federal Legislature under Sections 49 and 52?—One could not give a general answer to a question like that because one would have to go in detail into all these various provisions.

13,784. I was thinking of the words in Section 49—"will be open to discussion in both Chambers, except in the case of the salary and allowances of the Governor-General and of expenditure required for the discharge of the functions of the Crown in, and arising out of, its relations with the Rulers of Indian States," and then the Governor-General's consent is required to various subjects of discussion under Section 52 (b). I suggest that the same sort of

difficultly arises there?—I would not here compare the procedure at the Federal Centre in questions of this kind with the procedure about the excluded areas; the two questions are so entirely different. Speaking generally, in the former case we do not think that the discussion would be dangerous in the same way that it would be in the latter case.

Major C. R. Attlee.

13,785. May I ask in the case of the Budget proposals in a Province would the grants distinguish expenditure in the Province generally under any particular heading, such as Education, Public Health, etc., and would there be a separate sum for the partially excluded area? If not, you could not avoid having a general debate upon the amount as divided between them?—It is very difficult to give a specific answer to a question of that kind. I would have thought (I do not know what Sir Malcolm would say) that in most cases it would form a part of the general vote rather than be a specific vote, but I would not like to exclude the possibility of a specific vote. (Sir Malcolm Hailey.) It would form part of the general vote unless any special service was devoted entirely to the partially excluded areas such as a special school establishment, or the like; otherwise, it would form part of the general vote.

Lieut.-Colonel Sir H. Gidney.

13,786. I know that in Assam, in the partially excluded area, those objects are served by the Governor himself from his special funds—such as Public Health. I remember starting a leprosy campaign there and that was done by special funds and other things like that?—That would be a wholly excluded area, of course. We are speaking of a partially excluded area.

Mr. M. R. Jayaker.

13,787. With regard to Proposal 108, Secretary of State, there both kinds of areas are included—excluded areas and partially excluded areas. Is not that so?—(Sir Samuel Hoare.) Yes.

13,788. And you maintain no distinction between the two so far as the provisions of 108 are concerned?—Not for the purposes of legislation.

13,789. But do you not think that in order to carry out the idea of a partially excluded area, namely, that it is normally subject to the administration of the Province, with an overriding power in the Governor, it would be better to limit Proposal 108 to excluded areas and as regards partially excluded areas to rely upon the provisions of Proposal 92: "In order to enable the Governor to discharge the 'special responsibilities' imposed upon him, he will be empowered at his discretion: (a) to present, or cause to be presented, a Bill to the Legislature, with a Message that it is essential, having regard to any of his 'special responsibilities' that any Bill so presented should become law before a date specified in the Message; and (b) to declare by Message in respect of any Bill already introduced in the Legislature that it should, for similar reasons, become law before a stated date in a form specified in the Message." The peculiarity of Proposal 92 is that normally the laws of that Province apply to the area, excepting that the Governor can come in under a special responsibility and stop certain laws being enacted, either with or without amendments, in the form in which he desires, and that will apply to the Bills to be presented and the Bills which have already been presented. Do not you think that that power is sufficient in the case of the partially excluded areas? We are told that there is really a great danger with these partially excluded areas of inappropriate legislation being introduced. It has been put very strongly to us that this precaution is a very vital one.

13,790. But the Governor can stop legislation even from coming before the Legislature. He can interfere in preventing legislation, too. What I am pointing out is that you remove the distinction in Proposal 108 between an excluded area and a partially excluded area, and it is not necessary to go so far. It is quite sufficient, I submit, that if you give the Governor the power, according to Proposal 92, you practically have an adequate safeguard to prevent legislation from coming in. I should like you to consider that question, Secretary of State?—I will certainly consider all these points of Mr. Jayaker's, but I must not be taken to give the impression

that I do not think these precautions are necessary.

Mr. M. R. Jayaker.] I am not dealing with the precautions ; I am putting some of the difficulties which I feel.

Sir Austen Chamberlain.

13,791. Will the Secretary of State at the same time reconsider the point raised by Mr. Jayaker about the inclusion of this expenditure in the Budget ?—Yes.

13,792. I see the Secretary of State's difficulty, that where legislation can be generally applied and is part of the general administration, it is appropriate that the Legislature should discuss it, but when the Secretary of State dwells so much upon the conceivable dangers of a discussion, is he really satisfied that the Governor could prevent the discussion if the money touching those points is once in the Budget ?—I will certainly look into all these points again. They are difficult points.

Mr. M. R. Jayaker.

13,793. Then my last question is about what you answered yesterday, Secretary of State, as regards certain deficits being made good by the Centre. Do you remember that answer ?—Yes.

13,794. Will that be a case falling under Proposal 144 : " Provision will be made for subventions to certain Governors' Provinces out of Federal revenues of prescribed amounts and for prescribed periods " ?—Yes, it would be under Proposal 144.

13,795. My difficulty is this, that you interpret Proposal 144 and explain it in the Introduction in Paragraph 59 at page 30. If you will turn to that paragraph at page 30, you say : " It is also anticipated that certain Provinces will be in deficit under the proposed scheme. The North-West Frontier Province will (as now) require a contribution from the Centre in view of its special position." And it goes on. Then you mention Sind and Orissa, and then you mention Assam, and then you say : " It is intended that these Provinces should receive subventions from Federal Revenues. These subventions may be either permanent or terminable after a period of years." There is nothing to indicate that the

subventions mentioned in this paragraph and in paragraph 144 are subventions in order to make up the deficit caused by expenses over excluded areas ?—I think we might very well make that clearer.

Sir Phiroze Sethna.

13,796. In reply to Mr. Jayaker, Secretary of State, you observed that it is the intention to decrease in course of time and if advisable, the sizes of excluded areas or partially excluded areas, but, if I remember rightly, you said yesterday that you proposed to include in the Constitution Act a list of both excluded and partially excluded areas, and you would reserve the right of enlarging these areas ?—No, I did not say anything about that.

Sir Phiroze Sethna.

13,797. I stand corrected ?—Indeed, my proposal of including these areas in a schedule was to show how very limited they were in extent and in order to avoid the misapprehension that has grown up that it might have been our intention to exclude very large tracts from the scope of the ordinary administration.

Sir Hari Singh Gour.

13,798. The areas now described as excluded and partially excluded in the White Paper find no place in the present constitution ?—(Sir Malcolm Hailey.) I do not get the exact point.

13,799. The general point I am making is that under the General Clauses Act, the definition of " British India " would include both excluded and partially excluded areas ?—Under the General Clauses Act ?

13,800. Yes ?—Yes.

13,801. Therefore, under Section 65 of the Government of India Act, the Indian Legislature has power to make laws for all persons for all codes and for all places and things within British India. Therefore, the legislature at the present moment under the present constitution has the power to legislate as regards both excluded and partially excluded areas ?—I think Sir Hari Singh Gour has forgotten Section 52 (a) of the Government of India Act which gives the Governor-General power to take that out.

13,802. That is perfectly clear. The point I am making at the present moment is that the Indian legislature at the present moment has, generally speaking, the power of legislating both in respect of excluded and partially excluded areas?—Subject to any notification issued under Section 52 (a).

13,803. Has any notification been issued under Section 52 (a) curtailing the power of the Indian legislature?—Yes; I think you will find this as applying at all events, to take one typical example, to Spiti, another to Darjeeling, if you have this book.

13,804. I have that book. I am referring to that very book?—You will find those there, referring, at all events, to Spiti in the Punjab, I think to the Laccadive Islands, and Minicoy, and to one or two other small places at the same time.

13,805. Except these one or two small places which have been excluded by the notification under Section 52 (a) of the present Government of India Act, is it not the fact that the Indian legislature possesses power to legislate in respect of all other areas?—Yes, that is so, except those that are excluded by notification.

13,806. Yes; I have already said that?—Yes.

13,807. Do you propose to add to the future Constitution Act to limit the areas to those comprised in the notification under Section 52 (a), or would your exclusion be not only of those areas, but many other areas generally described and comprised in the Scheduled Districts Act of 1874?—No, the disability for legislation would apply only to areas which had already been notified under Section 52 (a). There would be no extension of the area.

13,808. That is to say, that so far as the power of the future Indian legislature to legislate is concerned, only those areas which are notified under Section 52 (a) would be exempted from its jurisdiction?—Those would be the only areas affected, yes.

13,809. Therefore, the future Indian legislature will have the unfettered power to legislate in respect of the other areas, whether they are partially excluded or not?—Yes; that is so.

13,810. And therefore it follows that having the power to legislate it will have also the power to discuss the propriety of legislation as it now has?—Yes, certainly.

13,811. And neither the Governor nor the Governor-General at the present moment has the right to fetter the discretion of the legislature in regard to discussion?—Save in certain cases where he can disallow resolutions.

13,812. I am not dealing with resolutions; I am dealing with discussion?—Discussion, yes.

13,813. Under the future constitution, however, you are giving the Governor a larger power than he possesses under the present constitution?—Not in regard to those particular areas.

13,814. Are they not comprised in paragraph 109 of the White Paper? Please consider paragraph 109 of the White Paper?—There is no area which will be included under the present scheme in paragraph 109 which is not already provided for in notifications under section 52 (a). I think I am right in saying that is substantially the fact. If you compare them you will find that they are substantially the same. (Sir *Samuel Hoare*.) They are substantially the same, and these powers about the prohibition of discussion are actually the powers that are in operation now. (Sir *Malcolm Hailey*.) You will find them in these notifications. (Sir *Samuel Hoare*.) If you look at pages 258 and 259 of the Government of India Act, you will see them set out. (Sir *Malcolm Hailey*.) That refers particularly to Spiti, Darjeeling and Chittagong. (Sir *Samuel Hoare*.) Speaking generally, the areas are the same, and the powers are the same. The case is even better from Sir Hari Singh Gour's point of view. The areas are smaller in extent than the areas notified under section 52 (a), and the powers retained are very much the same.

Lieut.-Colonel Sir *H. Gidney*.

13,815. Are there any additional areas?—No. (Sir *Malcolm Hailey*.) That is so. There is no area proposed under paragraph 109 which is not already covered by notification under section 52 (a), and some of the areas covered by

notification under section 52 (a) will not be included in paragraph 109.

*Sir Hari Singh Gour.*

13,816. As regards paragraph 109, am I right in supposing that discussions in the provincial legislature or asking questions on any matter arising out of an excluded area are barred, but the same provision would not apply and extend to the Federal legislature?—(Sir Samuel Hoare.) It would extend everywhere.

13,817. But you have only specified the provincial legislature?—You see, Sir Hari Singh Gour, the Federal legislature could only deal with Federal subjects.

13,818. Quite right—And this would not be a Federal subject.

13,819. But these areas will be fed by Federal finance?—One area will be.

13,820. That is the area I am dealing with?—Yes.

*Sir Hari Singh Gour.*] Therefore, this area being supported by Federal finance, the Federal legislature should have the power to discuss questions arising out of the budget relating to that area.

*Sir Austen Chamberlain.*] Is Sir Hari Singh Gour speaking of the totally excluded area?

*Sir Hari Singh Gour.*] Yes; I am pointing out that the words "provincial legislature" are used in paragraph 109.

*Sir Austen Chamberlain.*] I understood Sir Hari Singh Gour to say that whilst the provincial legislature might be prohibited from discussing, the money might appear in the Federal budget and the Federal legislature would therefore be able to discuss the affairs of the totally excluded area.

*Sir Hari Singh Gour.*] Yes; that there is nothing in paragraph 109 to preclude the Federal legislature from discussing that question.

*Sir Austen Chamberlain.*

13,821. I thought the Secretary of State said in answer to me a moment ago that the affairs of the totally excluded area would neither be votable nor discussable?—Yes, I did; and I contemplate that the provincial subvention would certainly not come up for discussion in the Federal legislature year by year. I

am assuming that these subventions, for instance, to Assam and Bengal would be made once for all.

*Sir Hari Singh Gour.*

13,822. They might be made once for all, but they are always part of the annual budget as Sir Malcolm Hailey will point out?—(Sir Malcolm Hailey.) No; they would not come up in the annual budget if, for instance, instead of being made, in the form of a grant they were made in the form of a share of taxation as in the case of the jute tax. It depends on the form in which it is made.

13,823. The form is uncertain; therefore, I say, so far as the Federal legislature is concerned, it cannot be precluded from discussing these questions when it is to finance the administration of the excluded areas?—It would depend entirely on the form that the subvention takes. If it took the form of an assignment of taxation, as it might very well do, then it would not appear in the budget in a form which would render it liable to discussion.

*Sir Austen Chamberlain.*

13,824. But if it took the form of a grant in aid annually out of the equivalent of the Consolidated Fund of such and such a sum for the excluded area, would it then be votable and discussable?—It would be discussable, Sir, if it appeared among the annual grants, but, of course, it is possible that the Indian legislature might adopt your form of permanent appropriations for Consolidated Fund charges, which would not appear annually.

13,825. But, Secretary of State, is it not evidently a matter which, if we accept your thesis that it would be dangerous to discuss these things, must be laid down by superior authority, and must not be left to the judgment year by year of the Indian legislature which might underrate the dangers of which you speak and wish to insist on its right to discuss?—(Sir Samuel Hoare.) I had certainly assumed that these provincial subventions would not come up for periodic discussion. I can see every kind of objection against their coming up constantly. I think they would make great

friction between the Federal centre and the Provinces. I have assumed that the allocation would be made to the deficit provinces, and once made, it would then not be susceptible to discussion by the Federal legislature.

*Archbishop of Canterbury.*

13,826. May I ask for information? Is not that what you mean in paragraph 144 by our friend the word "prescribed"?—That is so.

13,827. That it must be for a definite period, not renewable year by year. Therefore, it would not be anything of the nature of a grant in aid?—Yes.

*Dr. Shafa'at Ahmad Khan.*

13,828. Did not the Federal Finance Committee of the Third Round Table Conference state precisely what you have just said?—Yes; I think that is so.

13,829. With regard to the subvention to the Provinces?—I think myself that anything in the nature of annual grants in aid from the Centre to the Provinces would lay the Federation of the Provinces open to every kind of difficulty.

*Sir Austen Chamberlain.*

13,830. I have a note that when we were discussing paragraph 144, the Secretary of State explained that by "prescribed" he meant prescribed by an Order in Council?—Yes.

*Sir Austen Chamberlain.*] In that case, surely it would not appear in the Budget?

*Dr. B. R. Ambedkar.*] May I draw your attention to paragraph 149?

*Archbishop of Canterbury.*

13,831. May I have the answer?—(*Sir Malcolm Hailey.*) It would have to appear in the Budget if although prescribed by Order in Council it came in the form of an annual grant. There would be certain things laid down by Order in Council of another nature, and they will all come in the Budget if they come in the form of an annual grant. But, of course, you have not yet decided here what procedure you will really follow for appropriation. When you come to decide that question, you can provide that these things should not

come under discussion if they form permanent appropriations. My point was that if they appeared in the annual Budget, as they would do in our ordinary procedure, then even though they were prescribed by Order in Council they would be subject to discussion unless you add a sentence to Proposal 49 to make it clear that they should not be subject to discussion in the same way as the salary and allowances of the Governor-General, and so forth.

*Sir Austen Chamberlain.*

13,832. Secretary of State, without pronouncing any opinion upon whether the purpose you have sought to secure is the right one to aim at, that is to say, that there should not be a discussion, is it not clear that if that is your purpose, you must amend your White Paper?—(*Sir Samuel Hoare.*) No; I would not say amend the White Paper; I would say make our intentions rather clearer.

*Sir Austen Chamberlain.*] I thought that might be an amendment and even an improvement.

*Lord Irwin.*

13,833. With regard to this discussion, might I ask Sir Malcolm Hailey, for my own information, whether Section 67 (a) of the Government of India Act is not relevant which provides in sub-section (iii) that the proposals of the Governor-General for the appropriation of revenue, moneys and so on, relating to the following heads of expenditure shall not be submitted to the Vote nor shall they be open to discussion at the time when the annual Statement is under consideration unless the Governor-General otherwise directs?—(*Sir Malcolm Hailey.*) That would guide existing procedure, but, in the future, the question of discussion will be regulated by paragraph 49 of the Proposals of the White Paper.

13,834. Yes; I appreciate that. The only point of my question was to ascertain whether, if it was discovered that—on the assumption that Sir Austen Chamberlain made—it might be thought desirable to take steps to preclude discussion in certain cases, the procedure that at present prevails, under Section 67 (a) would not in fact be effective.



to do it?—If that procedure were repeated in the Statute. You would have to repeat that procedure in the Statute, and I would suggest that the way to do it is simply by adding a word or two to Proposal 49 of the White Paper.

*Sir Austen Chamberlain.*

13,835. It is quite clear that paragraph 49 gives no such power at present?—That is so.

*Lord Rankeillour.*

13,836. Might I ask Sir Malcolm Hailey what is the procedure with regard to the expenses of Chief Commissioners of Provinces? In paragraph 49 (v) it mentions it with regard to Baluchistan, but not as regards the others. Does that form part of the Federal Budget and is that discussable?—Yes.

13,837. Except the actual salary of the Chief Commissioner himself?—It is not votable but is discussable.

*Dr. B. R. Ambedkar.]* Everything in Section 49 is discussable.

*Sir Hari Singh Gour.*

13,838. Some of the items in the budget of the Chief Commissioner are also votable?—Yes. Section 49 excludes very little indeed from discussion, although it excludes a great deal from the vote.

*Mr. Zafrulla Khan.*

13,839. It excludes nothing from discussion except the salary and allowances of the Governor-General and of expenditure required for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States?—That is all.

*Mr. Zafrulla Khan.]* All other items therein specified are non-votable but they are discussable, and expenditure on Excluded Areas is expressly one of them.

*Sir Hari Singh Gour.*

13,840. The discussion that has so far taken place, Secretary of State, does not, I hope, make you believe, that we are in favour of tightening up the provisions of Article 49. We think that the provisions of Article 49 should stand as they

are and that the provisions of Article 109 should be understood in the sense in which they would ordinarily be understood, namely, that the prohibition only extends to discussion in the Provincial Legislature and not in the Federal Assembly. Now under the proposals of the White Paper, supposing the Governor-General and the Governor want to consult their respective Legislatures on the subject of Excluded Areas, you have given them no power to consult?—(*Sir Samuel Hoare.*) Partially Excluded Areas, yes.

13,841. No; I am talking of the Excluded Areas. You have given them no power to consult?—That is so.

13,842. But why should you not have given them the discretion to consult the Legislature if they so desire?—That is the question we have been discussing at some length this afternoon really. I have my own views. I quite accept the fact that they are not the unanimous views of everybody in the room.

*Sir Abdur Rahim.*

13,843. I want to know what is the position as regards the towns of Darjeeling and Rauchi, which are the Summer capitals of Bengal and Bihar. Are they Partially Excluded Areas?—(*Sir Malcolm Hailey.*) Darjeeling was a Totally Excluded Area, Ranchi, I think, was a Partially Excluded Area.

13,844. In the municipal limits too, or the district? These are the Summer capitals of two Provinces, are they not?—I think the whole of Darjeeling was excluded.

*Sir Hari Singh Gour.]* Including the Government House, possibly.

*Sir Abdur Rahim.*

13,845. Darjeeling is very largely inhabited by civilised Indians and Europeans, but you keep it Partially Excluded?—(*Sir Samuel Hoare.*) Yes.

13,846. But you have got the power and you propose to follow the policy of transferring Partially Excluded Areas to the ordinary scheme of Provincial Government?—When the conditions are suitable.

13,847. But do you not think that as regards Darjeeling and Ranchi conditions are quite suitable?—No, we do not, or

we should not have put them in the Schedule.

13,848. Of course, you have made your policy quite clear to us. I want to know as regards Delhi, which is the Capital of All-India—?—That does not come in here; Delhi is not an Excluded Area in any way.

13,849. I thought some questions were put regarding Delhi. Now as regards the Partially Excluded Areas, so far as I read the Memoranda of Dr. Hutton and Wing-Commander James, I gather that the people inhabiting these areas, the aboriginal tribes, are liable to become the victims of moneylenders and are likely to have their land swindled out of them, and they are also liable to fall victims to certain forms of litigation. These are evils which are not confined to these tribes?—No, but they are much more dangerous to people who cannot defend themselves.

Sir *Abdur Rahim*.] I do not know the source of your information, Secretary of State. Take the peasantry of Bengal. They are very badly the victims of moneylenders, and in the Punjab they had to pass an Act prohibiting any usurious transactions of that nature.

Mr. *Zafrulla Khan*.] We do not want to be declared an Excluded Area for that reason.

Sir *Abdur Rahim*.

13,850. I mean that these are the evils which are very common in India?—Perhaps they are common, but in some places they are worse than in others.

13,851. Are there any other special reasons why they should be excluded from Provincial administration?—I thought I had given all the reasons which impressed me for treating these areas as very exceptional areas. If any Member of the Committee or any Indian Delegate want more details, they will find a number of details set out in the Report of the Statutory Commission. I have got here a number of pages giving a series of cases in which the attempt to impose upon these Backward Areas legislation and systems of legislation that were unsuitable to them led to great trouble and in some cases to very serious risings.

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13,852. They could be prevented by the exercise of the special responsibility and the special powers of the Governor?—We feel that that is the whole basis of these proposals—that these are exceptional areas and they want further exceptional treatment.

Dr. *Shafa'at Ahmad Khan*.

13,853. There is only one point I want to ask you about, Secretary of State. With regard to the subventions to the Provinces, we made the following recommendation to the Government at the Third Round Table Conference. I will read this passage: "We consider that there should be an enquiry shortly before the new order is inaugurated in the Provinces, as a result of which the amount of any subvention, where necessary, and its duration (if only required for a limited period) would be finally determined. It is important that the decision should be final, as periodic revision could not fail to react on constitutional independence and financial responsibility." I hope that this recommendation will be made absolutely clear in the White Paper so that the financial autonomy of the Provinces may not be undermined or seriously affected?—I agree with the suggestion in Dr. Shafa'at Ahmad Khan's question. It is most important that these subventions should not be regarded as doles which can vary from year to year but they should be prescribed payments with the definite intention of setting the Provinces upon an even basis for making their own arrangements in the future.

Mr. *Zafrulla Khan*.

13,854. Secretary of State. I am sorry to recur again to the matter of the prohibition of discussion and questions under proposal 109, but I have one or two suggestions to put to you in connection with them. May I first take the case of the Partially Excluded Areas. There, I understand, the position is this. Normally the administration will be Provincial subject to the special responsibility of the Governor?—Yes.

13,855. Therefore if the raising of any question or any discussion is likely to affect the discharge of the Governor's special responsibility you think he should have the power to prohibit that question and that discussion?—Yes.

13,856. As a matter of drafting would you have any difficulty in accepting the suggestion that at the end of this proposal these words may be added: "so far as it affects his special responsibility"?—I would not like to say Yes or No to a point of drafting offhand. Upon the face of it, it would not appeal to me to alter the intention of paragraph 109. I should like to look into the suggestion.

13,857. My suggestion is that it puts it upon a proper basis without interfering with the object you have in view. It will merely declare the purpose of that power to disallow questions and resolutions, but I put it forward for your consideration?—I am much obliged.

13,858. Now I am approaching, I am afraid, a matter on which there may be a difference between us, but the suggestion I make is this: As you are aware, there are two kinds of restrictions on questions, resolutions and discussions provided for in the White Paper?—Yes.

13,859. One is that these matters may be disallowed by the Governor or the Governor-General. Of course, if not disallowed they are put in the ordinary way or raised in the ordinary way in the Legislature. The other point is that some of these questions and resolutions with regard to some subjects can be put or raised but only with the previous assent of the Governor-General. Now with regard to the latter category, the difficulty that a question is tabled or a resolution is tabled and is disallowed by the Governor and causes irritation does not arise, because the question or the resolution does not appear unless previous sanction is given. Would you have any serious difficulty in accepting the suggestion that questions or resolutions or discussions relating to Totally Excluded Areas may be permitted with the previous assent of the Governor?—The reason that I gave earlier in our discussion against that suggestion is that that does imply a right of discussion, and that when you have implied a right of discussion you may have people constantly pressing to exercise it. You then in practice have the Governor, if he thinks the discussions are going to be dangerous, constantly being involved in

refusing permission. That is are reason that, so far, has impressed me.

13,860. Passing from that consideration for a moment, am I correct in assuming that the Governor of a Province, when dealing with a Totally Excluded Area (under your scheme it will be only the Governor of Assam, but it does not matter which Province it is) would be acting in that matter and responsible, as it were, to the Governor-General and would be subject to the control and direction of the Governor-General?—Yes.

13,861. Therefore any directions issued by the Governor-General to the Governor in certain cases would be described as action of the Governor-General taken in his discretion, in his relationship with the Governor?—That would be so, yes.

13,862. That being so, may I draw your attention to Proposal 52 of page 51? It would be action of a kind which is described in sub-proposal (b) (ii)?—Yes.

13,863. "any action of the Governor-General taken in his discretion in his relationship with a Governor"?—Yes.

13,864. You realise that with regard to such an action questions could be raised in the Federal Legislature and discussion could take place with the prior assent of the Governor-General?—Yes; that is so.

13,865. So that the distinction arises that these matters may be under these provisions, apart from the Budget provisions, with the prior consent of the Governor-General, discussed in the Federal Legislature, but could not be discussed in the Provincial Legislature?—Yes, it might happen. I suppose also the Governor-General might make rules to debar discussions of this kind.

13,866. Altogether?—Yes.

13,867. But the Proposal expressly says that the power of the Governor-General will be to prohibit, save with his own prior consent, the discussion of certain matters?—Yes, but I suppose under the rules of business he might prohibit a discussion of questions of this kind.

13,868. That being so, what is your difficulty now in not putting the Governor in the same position as you have put the Governor-General?—It is that he is nearer the danger point. A discussion

at the Federal Centre would not appear to me to be so likely to stir up trouble in these tribal districts as a discussion close by the spot might.

13,869. So long as there was a possibility of discussion in the Federal Legislature with the assent of the Governor-General I will not press the matter any further. I am not pressing that it may of necessity be in the Federal Legislature?—I am much obliged to Mr. Zafrulla Khan for making this distinction between the two and I will look into it again.

Mr. B. R. Ambedkar.] The same point would be secured if Proposal 49 remained as it is.

Sir Hari Singh Gour.] And Proposal 109 remained as it is.

Mr. Zafrulla Khan.] Except this, that in Proposal 49 you could only discuss it during the Budget, and under this with

the prior consent of the Governor-General you could discuss it at any time.

Archbishop of Canterbury.

13,870. Mr. Secretary of State, just one point. I was not quite clear when you said that the administration of even the partially excluded areas would be one in which the Governor-General would have a natural right to issue directions to the Governor?—I was dealing, your Grace, with the constitutional aspect of the problem, namely, that the chain of responsibility in all this field of special responsibilities is the Governor of the Province, the Governor-General, and Parliament. I was not meaning to imply that normally the Governor-General would be intervening in questions of this kind.

Archbishop of Canterbury.] I see. I thought you rather went beyond that in answering Mr. Zafrulla Khan.

*(The Witnesses are directed to withdraw.)*

Ordered, That the Committee be adjourned to to-morrow—10.30 o'clock.

19th October 1933.

Present :

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Enstace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Mannbhai N. Mehta.  
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Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Bnta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon'ble Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*

13,871. Secretary of State, you are good enough to take the witness chair this morning and you are prepared to give the Committee evidence upon Federal and Supreme Courts, paragraphs 151 to 167 ?—Yes. I think I should like

to preface my evidence, if I might, by asking that the Memorandum that I have circulated should be published with the proceedings.

*Chairman.*

13,872. That shall be done ?—It is as follows :—

NOTE BY THE SECRETARY OF STATE FOR INDIA ON THE FEDERAL AND SUPREME COURTS.

A reconsideration of these paragraphs has led me to think that some of the proposals require further explanation and that others may perhaps need modification. Since the subject is a very technical one, I think that it may assist the Committee if I circulate the following explanatory note before our discussions on these paragraphs begin.

specified amount, in which case an appeal will lie without leave. But we also intend, and the Committee will, no doubt, wish to consider whether express provision should not be included to that effect, that the Federal Court should have power to decline summarily to entertain any appeal, or any application for leave to appeal, where it appears to them vexatious or frivolous, or made only for the purposes of delay ; though it would have to be made clear that this power could not be exercised where the Court from which the appeal is brought has already given leave to appeal.

1. The first matter to which I wish to draw attention arises in connexion with paragraphs 156 and 157. I am anxious that there should be no misunderstanding as to the underlying intention of these paragraphs. It is, I think, agreed that, so far as constitutional issues are concerned, there should be a means of ready access to the Federal Court, which (subject always to a right of appeal to the Privy Council) will be the interpreter and guardian of constitutional rights. On the other hand, it is obviously impossible to allow the Federal Court to be overwhelmed with a mass of appeals based upon the mere suggestion that a constitutional issue is involved ; and we, therefore, propose that an appeal should only lie by leave of the Court whose decision it is desired to challenge, or, if that Court refuses leave, by leave of the Federal Court itself, unless the value of the subject-matter in dispute exceeds a

2. The procedure contemplated by these proposals is, therefore, that a person who desires to appeal from the decision on a constitutional issue of the High Court of a Province or a State will ask that Court to state a Special Case for the decision of the Federal Court. If the value of the subject-matter in dispute exceeds a specified amount, it will be the duty of the Court to state a Special Case accordingly. In other cases, the Court will be entitled to accede to the request or to refuse it, as it may think fit ; but if it refuses, the applicant will have the right to apply to the Federal Court for leave to appeal, and, if the application is granted, the Federal Court will then call upon the

Court by which the application has been refused to state a Special Case for its consideration.

3. As I understand it, the States have never dissented from the proposition that in some form or other the Federal Court should have power to pronounce upon any matter arising in a State Court which involves a constitutional issue. Some of them, however, have urged that a procedure such as that outlined above would subordinate their High Courts to an authority external to the State, and thereby derogate from the sovereignty of the Ruler. In my view this is to misapprehend the position which the Federal Court would occupy under the Constitution; for the Federal Court as an integral organ of the Federation will, for purely Federal purposes, be the Court no less of the States than of the other units of the Federation. I assume, of course, that any Ruler acceding to the Federation would undertake in his Instrument of Accession that his Courts would comply with any request of the Federal Court to state a Special Case and that effect will be given in his State to any decision which the Federal Court might pronounce, whether in the exercise of its appellate or original jurisdiction.

4. In this connexion I should like to make it clear that it is not intended by paragraph 160 that the Federal Court should possess any power of Federal execution, either in British India or in the States. It will pronounce judgment on matters which come before it, but those judgments will be carried out and made effective through the agency of the Courts from which the matter before it came.

5. In paragraph 162 there is no intention to give the Federal Court any power of control over the High Courts of British India such as the High Courts themselves possess over subordinate tribunals in the Province; no such power of control could in any event be exercised over the State Courts. It is, however, necessary that the Federal Court should be able to give a binding decision in any case in which it has original jurisdiction, and in the exercise of its appellate jurisdiction to designate, in any judgment which it may give, the

nature of the remedy, if any, which the Court from whom the appeal is brought ought in the opinion of the Federal Court to have granted.

6. In the preceding paragraphs I have endeavoured to explain, without suggesting any modification of them, certain of our proposals in Part IV of the White Paper. In the following paragraphs I desire to suggest for the consideration of the Committee the desirability of two modifications of the proposals as they stand.

7. Paragraph 156 limits the appellate jurisdiction of the Federal Court to cases involving the interpretation of the Constitution Act or of any rights or obligations arising thereunder, and no provision is therefore made for securing uniformity of interpretation in the several Provinces and States of Federal laws extending throughout the whole area of the Federation; though it is true that so far as British India is concerned, uniformity may to some extent result from the existence of a right of appeal to the Privy Council. Uniformity of interpretation is, however, no less important in the case of the States than in the case of British India. It seems to me that the proposals in the White Paper might be held open to criticism in this respect, and accordingly I suggest that the Committee might do well to consider the propriety of extending the appellate jurisdiction of the Federal Court so as to include cases involving the interpretation of Federal laws. If this suggestion finds favour I think myself that it would be necessary, and would, for all practical purposes, suffice (even though the distinction may not be an entirely logical one), to define "Federal laws" for this purpose as meaning laws with respect to matters included in List I of Appendix VI and not as including those with respect to matters in the concurrent field, with which the States are not in any event concerned. If this were done, the jurisdiction of the Federal Court in a State would, of course, extend only to laws on matters in List I which that State had accepted as a Federal subject.

8. Paragraphs 163 to 167 empower the Federal Legislature if and when it thinks fit, to establish a Supreme Court of civil

appeal for British India, separate from and independent of the Federal Court, and thus competent to give final decisions in British India on all questions of the interpretation of Acts, Federal or Provincial, which do not involve constitutional issues. This proposal has been criticised on the ground that the establishment of two Courts of this kind, neither subordinate to the other, but each exercising a jurisdiction which, however, carefully defined, must almost inevitably from time to time overlap that of the other, is likely to lead to grave difficulties. I think that there is much force in this criticism. Doubts must necessarily arise from time to time whether one Court or the other has jurisdiction in a particular case (owing to the practical impossibility of separating rigidly questions of legal interpretation which do, from those which do not, involve constitutional issues), and undignified conflicts may ensue, which will detract from the prestige and reputation of both. I suggest, therefore, that the Committee might with advantage consider whether, in place of the scheme outlined in paragraphs 163 to 167 of the White Paper, provision might not be made enabling the Legislature, if and when it was thought desirable, to extend the jurisdiction of the Federal Court rather than to establish a new and (in a sense) competing Supreme Court. If the Committee were to adopt the suggestion which I have made in the preceding paragraph, the argument against the establishment of a separate and independent Supreme Court acquires additional force.

This modification, if it were to be accepted, would be, I suggest, an alteration rather in form than in substance of the White Paper proposals. Importance has been attached by eminent legal opinion in India to the desirability of ensuring that the Court of Civil Appeal for India if and when it is established, should be established on sound lines, and that its Judges should be of a calibre to command respect. These, as I understand it, are the main desiderata in the eyes of the protagonists of a Supreme Court: and the suggestion for the creation of a Supreme Court, separate from the Federal Court, was, I think, due in

part to the influence of an idea which had taken shape before the question of Federation or of a Federal Court became an immediate issue and in part to the assumption that it would be impossible to combine the functions of both in one organisation in a manner which would be acceptable to the States. Objections of the latter kind would, I suggest, be largely discounted if, as I assume, provision were made that the Federal Court, when endowed with the functions of a Court of Civil Appeal for British India, should be organised in two divisions, one of which would act as Federal Court proper and the other as Court of Civil Appeal: while the intentions underlying the White Paper provisions for a Supreme Court would, for all practical purposes, be met by the modification of those proposals which I have suggested and without involving the disadvantages attaching to a separate Court to which I have drawn attention.

It seems clear, however, that a modification on these lines of the provisions of the White Paper would preclude the possibility of empowering the Federal Court (as might not inappropriately have been done in the case of a separate Supreme Court) to entertain criminal appeals from British Indian High Courts: for the possession of such powers would involve so large an accretion of business not germane to the functions of a Federal Court as to obscure and overweight its primary purpose, and to necessitate an expansion of personnel which might seriously affect its quality, and thus the prestige of the Court as a whole. If, therefore, the Federal Legislature is to be empowered, if and when it thinks fit, to provide for a system of criminal appeals on the lines and of the scope indicated in paragraphs 166 (second sub-paragraph) and 167—a question on which considerable difference of view has been expressed by representatives of Indian opinion—the Court so erected would have to be entirely separate from the Federal Court and subordinate to the latter in the sense that the Federal Court would have to be entitled to call to its own file any criminal appeal which raised a constitutional issue.

9. I understand that fears have been expressed by some of the State that to

confer upon the Federal Court a jurisdiction extending beyond strictly constitutional issues would tend to push into the background its true function as an interpreter and guardian of constitutional rights, and that so large an increase in the personnel of the Court would be required as to make it difficult to secure Judges of the necessary standing and quality. I doubt whether these fears are well-founded, if the right of appeal to the Federal Court, on other than constitutional or Federal matters, were, in addition to limitation based on suit value, to be strictly limited (as I hope would be the case) to cases where some important point of law is involved or where a divergence of opinion among Provincial or State Courts renders a judgment of the highest tribunal desirable. I assume also, as I have already mentioned, that the Federal Court would, if its jurisdiction were extended in this way, sit in two divisions or chambers: and in that case I do not think that there would be any danger of its constitutional functions (in the stricter sense) becoming in any way submerged, nor that a small number of additional Judges would not be able to cope with the work involved. On the other hand, it seems to me that the dignity of the Court would be enhanced by making it the one final Court of Appeal (subject always to the right of appeal to the Privy Council); and a powerful and respected Federal Court is in my opinion essential to the successful working of the Federation.

*Marquess of Salisbury.*

13,873. Secretary of State, I am quite sure that the Committee have taken note of your wish that the Memorandum should be published. Indeed, if I may be permitted to do so, I would try to ask my questions bearing in mind all the time the Memorandum which has been circulated, although I feel specially incompetent to deal with these technical and legal issues. May I, first of all, ask how you contemplate that the Federal Court should be composed? I am quite aware of the phrases used in the White Paper in respect of it, but especially in view of the Memorandum the Federal Court is to be so important that one wonders whether there will be any

preference for lawyers to serve as Judges in the Federal Court. The Secretary of State will remember that the point was raised with regard to the High Court, and I recall that he was not willing to change the provisions of the White Paper in respect of the High Court, but I wondered whether the same answer applied to the Federal Court?—My Lord Chairman, we had not contemplated that there should be any Judges in the Federal Court who had not been barristers and, indeed, Judges. I do not think there has ever been a suggestion that there should be appointed to the Federal Court persons who had not had a definitely legal training and were members of the legal profession.

*Marquess of Salisbury.*] That is a very important answer.

*Marquess of Reading.*] May I just ask one question on that?

*Marquess of Salisbury.*] If you please.

*Marquess of Reading.*

13,874. Would that apply, Secretary of State, to the case of the Civil Servant who was serving in one of the High Courts? Suppose he qualified under one of your qualification paragraphs here, for example, having served for five years in a Chartered High Court, would that disqualify him because he is a Civil Servant?—The qualifications, Lord Reading, are set out in paragraph 153.

13,875. Yes, I was looking at them. I am only putting this to you to ascertain. Assume, for example, in the Service under the procedure which Lord Salisbury mentioned just now, and which was discussed before, he was appointed a Judge of the High Court, and assume that he has been a Judge for five years: if he had been a Judge of a Chartered High Court would not he be entitled then to be appointed a Judge of the Federal Court?—Yes, he would.

*Marquess of Salisbury.*] Qualified?

*Marquess of Reading.*

13,876. Qualified is quite right. That is what it means?—Yes, he would, and I should wish to qualify my answer to Lord Salisbury with this further answer: It would qualify him.



Marquess of Salisbury.

13,877. I thought that probably would be the answer, but at the same time surely the authorities would give a preference in matters which are going to deal with most technical and legal issues—surely they would give a preference to a man of legal training?—Yes, I think that is bound to happen in practice.

13,878. The new Memorandum as I read it does not affect the original jurisdiction so far as it goes of the Federal Court. That remains unaffected by the new Memorandum?—Yes.

13,879. The original jurisdiction of the Federal Court would be as in the White Paper to try constitutional issues as between the Federation and the units, or as between the units themselves, or as between the States and the units. There would be no private litigants?—Under the provisions of Proposal 155 that is so.

13,880. There, of course, is the special power of the Governor-General under Paragraph 161 to refer points of constitutional difficulty to the Federal Court?—Yes.

13,881. That corresponds, I think, to some provision in connection with the Privy Council?—Yes.

13,882. Then we come to what is new or partly new in respect of the appellant jurisdiction of the Federal Court. The phrase in the White Paper is very wide because it includes any rights or obligations arising thereunder—that is, under the constitutional statute. That would be very wide. I suppose the Secretary of State contemplates that it should be very wide. For example, if a private litigant brought an action about discrimination and then he took it to the Appeal Court, it would come before the Federal Court?—On appeal, that is so.

13,883. And not only discrimination, but as to whether a particular issue arose in the concurrent field as well as if it arose under a Federal statute or a Provincial statute: that would come before the Federal Court?—Yes, I think it would.

13,884. And all these questions we have discussed, as to whether a particular alleged statute in India was repugnant to an Imperial statute—any

issue of a private litigant which raised those points—would come before the Federal Court?—Yes.

13,885. So that it would have a very wide jurisdiction because that would include an enormous amount of litigation in India, would it not?—I do not know about the word "enormous." I am not sure.

13,886. I agree that the adjective is unnecessary and absurd—but a large amount?—It does cover a wide field and, indeed, I think it would be found that every Federal Court everywhere in every Federation must cover a wide field.

13,887. It is quite true that the appeal is not of right, but in the new Memorandum, on page 2, is shown the kind of litigation which is not to be accepted—the appeals which are not to be accepted because they are described as merely appeals for delay, or what are called vexatious or frivolous appeals, but any genuine appeal, although not of right, would be, in practice, accepted by the Federal Court?—Yes.

13,888. Up to a certain amount, of course, but in practice, even if they were not vexatious or frivolous, the right of appeal would be accepted by the Appeal Court in those cases?—Yes.

13,889. I wanted to make quite sure that we understood how wide the jurisdiction was. Then you would have appeals foreshadowed from the State Courts?—Yes.

13,890. There is a phrase (I think it is in the new Memorandum) which seems to show that the Secretary of State is not quite certain whether that right of appeal from the State Courts has been accepted by the States?—The position is really this, that in our previous consultations we have concentrated almost entirely upon a discussion of an appeal in cases involving questions arising out of the Constitution Act. We have come to the view that there must be some appeal also in cases involving the interpretation of a Federal law: that is the reason why I expressed myself in the way in which I have expressed myself in paragraph 3. I am drawing the special attention of the Committee and of the Indian Delegates to a feature of

the problem which has not taken a prominent part in the previous discussions.

13,891. So that I suppose we shall hear before the close of these discussions whether the Representatives of the States do accept the right of appeal from the State Courts to the Federal Court?—It is just for the purpose of concentrating that kind of discussion upon the problem that I have emphasised it in the new Memorandum. I certainly hope we shall have the views of the States' Representatives upon it.

13,892. And that, of course, if it were accepted it would not merely be upon issues between the State and the Federation, but I suppose a private litigant would raise issues depending upon the interpretation of the law of the Constitution?—Yes.

13,893. Then, merely to go through it, the appeal to the Privy Council is maintained as of right when it involves questions about the Constitution?—Yes.

13,894. Would that apply to private litigants as well as to cases between the units and the Federation?—Yes.

13,895. Then we come to the main provision of the new Memorandum, which supersedes, if it be accepted, the paragraphs dealing with the Supreme Court in the White Paper, and under that the Federal laws, as well as constitutional laws, will be the subject of appeal to the Federal Court?—Yes.

13,896. There are certain limitations which the new Memorandum suggests. I think an object which the Secretary of State has in mind is to limit the number of appeals which this would involve. I gather that it will differ in that respect from the provisions as to the Supreme Court in the White Paper under which all Provincial decisions would be subject to an appeal to the Supreme Court, with leave, of course, I mean, but they would be appealable to the Supreme Court?—I do not quite follow that point.

13,897. Under the paragraphs as they stand in the White Paper now providing for a Supreme Court there it would appear that the Supreme Court would be a Court of Appeal over all the High Courts of the Provinces?—Yes.

Marquess of Salisbury.] And not limited, except in so far as their discretion is limited to special kinds of law, but all the laws of the Provinces would be susceptible of appeal to the Supreme Court.

Marquess of Reading.] Is that so? I do not quite read it so. We will hear what the Secretary of State says about it.

Marquess of Salisbury.] I am perfectly certain that I shall be found to be quite wrong in many ways. It is a most technical matter.

Marquess of Reading.] We only want to get it clear. I think if you look at page 76 it says that there is a power to extend the jurisdiction.

Marquess of Salisbury.] If Lord Reading would look at paragraph 175—

Marquess of Reading.] But has not that gone—I think it has gone?

Chairman.

13,898. I think we had better have the Secretary of State's answer upon that?—I think I understood Lord Salisbury's question to mean: Does our change restrict the right of appeal from the Provincial Courts?

Marquess of Salisbury.

13,899. That is right?—The answer is No.

13,900. I draw attention to it just for the purpose of clearing it up?—Sir Malcolm wishes to amplify my answer a little bit. Substantially it is correct, but he wants to add a detail or two to it. (Sir Malcolm Hailey.) The original proposal of the White Paper was to constitute a Supreme Court which would hear all the appeals from Provincial Courts on all decisions at which they might arrive, whether those decisions referred to the interpretation of Federal law or Provincial law. The proposal now is that the Federal Court shall not only hear appeals referring to the interpretation of the Constitution, but also appeals whether from State Courts or High Courts referring to the interpretation of the Federal law. Subsequently if what may be described as a Supreme Court side were added to the Federal Court,

then that Federal Court, on its Supreme Court side, would hear appeals from the Provincial High Courts on Provincial law also. That is only if the second stage were taken and what may be described as a Supreme Court side were added to the Federal Court.

*Marquess of Reading.*

13,901. That is only, is it not, if the power is subsequently extended?—Yes.

13,902. If I read the new Memorandum of the Secretary of State correctly, he limits the rights of appeal to the Supreme Court to constitutional questions and to Federal laws?—Yes.

13,903. But he suggests that there should be power given hereafter to extend this right of hearing appeals to other cases which would cover all such cases if so desired which would come otherwise under paragraph 165. That is to say, it would then be, if the right was extended, a Supreme Court of Appeal?—That is so.

13,904. And subject always to a limitation at present at any rate on criminal jurisdiction?—That is what I have described as a second stage—if the right were extended.

13,905. That is how I understand the new Memorandum?—Yes, but that would not apply to criminal cases.

*Marquess of Salisbury.*

13,906. No. Let us leave out criminal cases altogether for the moment. If that be so, may I call the attention of Sir Malcolm to the top of page 5 of the new Memorandum. There he will see that it is proposed to define the Federal laws for this purpose as meaning laws with respect to matters included in List I of Appendix VI and not as including those with respect to matters in the concurrent field?—Yes.

13,907. That is a limitation introduced into the new Memorandum which did not exist in the White Paper under paragraph 165 because then the laws in the concurrent field are not apparently to be appealable to the Appeal Court?—They would under the original proposal have been appealable to the Supreme Court.

13,908. When the Supreme Court is going to disappear and the Federal Court

is put in its place there will be this change and all the issues under List III on the Concurrent List will not be appealable apparently to the Federal Court, whereas they would have been appealable to the Supreme Court?—They will not at the first stage, but if the right of expansion which it is proposed to give in the Constitution were exercised, and what we have previously described as a supreme side of the Federal Court were constituted, then they would be heard by the Federal Court, but until that right were exercised they would remain with the Provincial High Courts and there would be no further appeal in India.

13,909. So that the answer of Sir Malcolm means that the later pledges of the new Memorandum are intended to supersede the earlier pledges. I am not making a polemical point, but I am calling attention to it just to make it clear, because under paragraph 5 it is clear that the concurrent field is excluded from the Federal Court?—As now proposed. (Sir Samuel Hoare.) Lord Salisbury I think, if I may intervene, is really talking about the two stages as if they were one. In the first stage there will be the Federal Court dealing with Federal cases. At the same time, power will be given to make this Supreme Court side of it. When the Supreme Court side of it is made, then there will be an appeal in the concurrent field, just as in the Provincial field, to the Supreme Court side of the Federal Court. (Sir Malcolm Hailey.) Might I add a word. In the White Paper, as you will see from paragraph 163, that was only an enabling provision to make a Supreme Court. It is still proposed to have an enabling provision to make a Supreme Court side of the Federal Court. In both cases, therefore, they are enabling provisions.

*Earl Peel.*

13,910. Will not it be almost essential to have that extension almost at once. You cannot allow, can you, in the concurrent field the Provincial Courts to decide whether the Federal law or the Provincial law should prevail. There is bound to be an appeal, is there not, almost at once on those points?—The field is one which is already with the

Provincial High Courts, the Federal law in the concurrent field. Tho Federal legislation in the concurrent field is only introduced in order to secure uniformity in the codes and in certain types of legislation like labour legislation, and so forth.

*Marquess of Reading.*

13,911. But suppose a Constitutional question arose with regard to concurrent rights, then the Federal Court would have the power to deal with it on appeal, would it not?—Yes.

13,912. Unless it is expressly excluded, it would clearly come within Constitutional questions?—It would have to pass from the High Court or from the Federal side of the Federal Court if it happened to lie there at the moment, and he heard on that side of the Federal Court which would be dealing with Constitutional problems. If we suppose, for instance, there were two divisions, there would be one division dealing with that, and it would have to pass to that division. So, if any case of interpretation of the Constitution arose, whether in the High Court or on one side of the Federal Court, it would still have to be disposed of by that side of the Federal Court which dealt with Constitutional problems.

*Sir Austen Chamberlain.*

13,913. Is not that on the assumption that what has been called the Supreme Court side of the Federal Court has been brought into existence?—No. In any case that would be so. In no case, would the High Courts have the last word in dealing with the interpretation of the Constitutional law.

*Mr. M. R. Jayaker.*

13,914. May I ask a question on this point to clear it up? I am not sure whether I follow. Suppose a point arises as to the interpretation of the Federal law (not Provincial law) in the concurrent field, is that question to be finally decided by the High Court, and the party has no right to proceed further as regards the interpretation of such a law?—That is the proposal unless it raises a Constitutional issue, such as, for instance, of repugnance or the like.

13,915. Supposing a question arose as to which law is to prevail in the concurrent field; there is a Federal law and a Provincial law, and the question is which law is to prevail?—That is a Constitutional question. It is a question of the interpretation of the Constitution as to which law prevails.

13,916. Take a pure question of interpretation of Federal law in the concurrent field—I am not speaking of Provincial law in the concurrent field; that you can leave to the High Court—in the interpretation of such a Federal law is the decision of the High Court to be final and the party has no right to proceed to the Federal Court?—In the concurrent field, that would be the case, and an appeal would lie to the Privy Council and not to the Federal Court.

*Marquess of Reading.*

13,917. Why do you draw the distinction as regards that, as it is apparently merely this question of the concurrent field. I do not follow why the distinction is drawn. Your general scheme, as outlined by your Memorandum is, of course: on Constitutional questions an appeal to the Federal Court: Interpretation of Federal laws appeal to the Federal Court: a certain right of extension which I do not deal with at the moment at a second stage if it arises, but on this first stage you say that this interpretation of Federal law, as distinguished from Constitutional questions, shall not apply to matters in the concurrent field. I do not understand why you draw that distinction?—I think it would be justified on this ground, that though these are placed in the concurrent field, yet they are not really Federal: they are really Provincial. They are placed in the concurrent field merely to secure uniformity of legislation. The second reason is that were you to extend jurisdiction over the whole of the concurrent field, then you would bring at once into the Federal Court all questions relating to the interpretation of our great codes like the Criminal Procedure Code, the Indian Penal Code, the Civil Procedure Code, and the like, and the work of the Federal Court would be immediately extended to a degree that was not contemplated in

the first instance. The effect might be to all intents and purposes giving the Federal Court at once a very large share of the functions which would fall on the Supreme Court if it were constituted.

*Earl Peel.*

13,918. Under those circumstances you might be getting different decisions on the same point in different Provincial High Courts on one of these Federal laws in the concurrent field?—That might be the case. It is, I am afraid, the case at present, that in the interpretation of some of our codes, such as the Civil Procedure Code, and the interpretation of some of our Acts which would fall into that concurrent field (the Limitation Act and the like, and the Law of Evidence) you do have differences of interpretation between the High Courts at present.

*Marquess of Salisbury.*

13,919. But, Sir Malcolm, you will observe, will you not, that in respect of Lord Peel's point, your Memorandum is different from the White Paper, because, under the White Paper, the Supreme Court would have had cognisance of these issues, and therefore there would have been a co-ordination of the judgments of the various High Courts, but under the change by the exception of the concurrent field, you are withdrawing all the issues which arise in the concurrent field from any power of co-ordination by the Appeal Court, and so there is a difference between the two systems?—No; if I may say so, there is not really a difference, because, under the White Paper, there was an enabling provision to make a Supreme Court. Under the Proposals now put forward in the Secretary of State's Memorandum, there is still that enabling provision. Therefore, in either case, the question of obtaining identity of judgment in regard to these questions in the concurrent field, and in Provincial Legislation, would depend upon your exercising that enabling provision.

13,920. Do you mean that there may be, after the Secretary of State's Memorandum, still a Supreme Court?—Certainly, yes. (Sir Samuel Hoare.) I do not think Lord Salisbury realises that in

both cases, all that we do is to give powers for bringing either a Supreme Court into being, or a side of the Federal Court that would do the Supreme Court work. In both cases, both in my Memorandum and in the White Paper, that power is an enabling power. We do not propose under the White Paper here and now to bring the Supreme Court into being. It is an enabling power that we propose.

13,921. So that what your answer amounts to, Secretary of State, is that there was no certainty under the White Paper of co-ordination in these particular classes of judgments and there is no certainty still?—This is only the case of the Provincial field where there is uniformity of legislation. The problem of the States does not enter into it.

13,922. No?—There is already the appeal to the Privy Council as the co-ordinating sanction.

*Dr. B. R. Ambedkar.*

13,923. Might I ask one question on that point? As I understand it in the concurrent field there will be an appeal to the Privy Council from the decisions of the High Court?—Yes.

13,924. What I do not understand is this, if there can be an appeal to the Privy Council in an issue arising out of an interpretation of the concurrent law in the concurrent field, what difficulty can there be in allowing such an appeal to the Federal Court?—One of our reasons anyhow is that we do not want to flood the Federal Court with an enormous amount of work and the demand for a very large number of Judges at the beginning.

*Mr. Zafrulla Khan.*

13,925. May I put one question on this point? Secretary of State, do I understand that the chief difference between the proposals in the White Paper and the proposals in the Memorandum is this: The White Paper proposes that simultaneously with the bringing into force of the New Constitution there shall be established a Federal Court, which generally speaking, shall take cognisance of matters described in Proposal 155, and also hear appeals whether in the form of appeals or special references from

the High Court in matters involving (I mean speaking generally) the interpretation of the Constitution?—Yes.

13,926. And this is supplemented by a proposal that power shall be given to the New Federal Legislature when the proper time arrives for them to set up a Supreme Court for British India to hear appeals in all other matters subject to such limitations as regards their jurisdiction, and so on, as are prescribed in the White Paper. That is generally the White Paper Proposal. Your Memorandum modifies it to this extent (i) That the jurisdiction of this Federal Court which is to be immediately set up should be extended to this extent that, in addition to the matters which are described in the White Paper, over which it would have jurisdiction, it should also have jurisdiction to hear appeals arising out of the interpretation of Federal laws, whether for the moment you define them as laws relating to matters in List I, or whether you define them as relating to matters in List I and III?—We define them as relating to matters in List I.

13,927. I am not on that point for the moment. The first change is that the jurisdiction of this Federal Court which is to be immediately set up shall be to that extent extended?—Yes. (Sir Malcolm Hailey.) Yes.

13,928. Then you say that with regard to the rest of the field, after you have transferred from the remaining field into this Federal Court field these matters of Federal laws, in the remaining field, your original proposal, as in the White Paper, continues, that a Supreme Court may be set up by the Federal Legislature. But you suggest that that Supreme Court shall not be set up as a separate Court but shall be only the other side, the second division, as it were, the Supreme Court division of the Federal Court?—(Sir Samuel Hoare.) That is so.

13,929. The main difference, therefore, is that whereas appeals on questions of interpretation of Federal laws under the White Paper Proposals would not have gone to the Federal Court, but would only have gone to the Supreme Court if and when it was set up, you propose that these appeals shall go immediately

to the Federal Court, and with regard to appeals with regard to the remainder of the field, the position shall continue as is set out in the White Paper generally?—That is so.

*The Lord Chancellor.*

13,930. May I ask a question? Would you be good enough to look at paragraph 2 of the Memorandum that was circulated last night?—Yes.

13,931. I only want to read the first sentence: "The procedure contemplated by these proposals is, therefore, that a person who desires to appeal from the decision on a Constitutional issue of the High Court of a Province or a State will ask that Court to state a special case for the decision of the Federal Court." That question I want to ask is this: We are all agreed that what we want to get at is the meaning of "a Constitutional issue." I quite understand that you can define a Constitutional issue by saying that it is any issue which arises out of any Act in the First List?—No, it is any case arising out of the Constitution Act.

13,932. I see. Now, what one wants to know is this: Supposing you get some case in a Provincial Court which raises a Constitutional issue, are there certain circumstances under which that case cannot go to the Supreme Court branch of the Federal Court?—I would say No. When an issue was raised in another Court raising an issue under the Constitution Act then that case would go to the Federal Court.

13,933. You do not use the words "Constitution Act", you use the words "Constitutional issue", and there may be Constitutional issues arising out of all those three cases?—Generally speaking, we mean the Constitution Act here.

13,934. Then, I understand that in every case which arises out of something in the Constitution Act there will be an appeal to the Supreme Court side of the Federal Court?—No, the Federal side.

13,935. Then, I do not quite follow those cases to which you refer which raise Constitutional issues, and yet there is no appeal from the Provincial High Court?—I do not see what cases those would be. All Constitutional cases

would have to go on appeal to the Federal Court ; all cases arising out of the Constitution Act.

*Marquess of Reading.*

13,936. Would not a Constitutional issue be an issue which arises as to the interpretation of some passage or part of the Constitution Act ?—Yes ; that is what I mean.

13,937. Then you go on afterwards to deal with a change in the Federal laws which is a totally different thing. That is dealing with the laws which come under the particular schedule which are the Federal subjects ?—Yes, that is so.

13,938. That is quite a new thing and a different matter. But your original plan is maintained to this extent, that the Federal Court is to be the Court to which appeals will come, or which will have an original jurisdiction in all questions of issue, that is of controversy arising with regard to the interpretation of any part of the Act conferring the Constitution ?—Yes.

*Sir Akbar Hydari.*

13,939. Am I right in understanding the position ? Would the Supreme Court side when established hear appeals raised on strictly Federal laws, that is All-India laws, and would there be appeals heard by that Supreme Court side both from judgments of British India as well as State Courts, or is it your intention that even after the Supreme Court side has been established, all cases dealing with Federal law strictly so-called, that is in List I, should go before the Federal side of the Court ?—Yes. We are contemplating the interpretation of the Federal law as going to the Federal side. We are not contemplating—I hope my advisers will correct me if I am wrong ; this is a very technical affair—that States' questions should go to the Supreme Court side of the Federal Court ?—(Sir Malcolm Hailey.) That is so.

13,940. Even with regard to cases arising out of List I in which States have federated ?—(Sir Samuel Hoare.) The List I-cases would go to the Federal Court, and not the Supreme Court side of it. (Sir Malcolm Hailey.) If Sir Akbar would kindly look at the List, he will see that the concurrent field of

legislation, List III, and the Provincial laws with which the Supreme Court side of the Federal Court would deal, neither of them affect the States ; they are purely British India. Therefore, the Supreme Court side of the Federal Court would deal only with British India Acts.

13,941. Would the Supreme Court side deal with appeals from British Indian Courts on cases relating to List I ?—No ; that would be the Federal Court.

13,942. Those also would go to the Federal side ?—Yes.

*Marquess of Salisbury.*

13,943. Supposing an ordinary litigant in a State raises a question of a Federal law which applies to the State (because under the Instrument of Accession, there may be such laws) and he is unsuccessful and desires to appeal ; to what Court would he appeal ?—(Sir Samuel Hoare.) To the Federal Court acting in its Federal capacity.

*Sir Manubhai N. Mehta.*

13,944. If there is a constitutional issue involved then the jurisdiction, as you said, would be in the Federal Court on its Federal side ?—Yes.

13,945. Also will the party have the option to go to the Provincial Court or to the State Court, because we have also given the Federal Court appellate jurisdiction in such matters, so where will the venue be in the first instance ? Will it be to the Federal Court in its original jurisdiction or, as I understand it, would it be this ? Where the party concerned is a constitutional unit then he must go to the Federal Court, but if he is a private citizen he has the option to go to the Court of his own Province and then go to the Federal Court by way of an appeal. I wanted that to be clear ?—(Sir Malcolm Hailey.) No. If you would look at paragraph 155, the original jurisdiction is between the federation and a province or a state ; or between two provinces or two states ; or secondly any matter involving the interpretation of, or arising under any agreement entered into after the commencement of the Constitutional Act between the Federation and a Province or State. Those would be what might very roughly be described as State issues. A private litigant would go to

his own Court first of all whether he lived in a State or in a Province.

13,946. That is what I understood ?—And if he were dissatisfied with the decision of his own court, then the matter would not lie within the original jurisdiction but within the appellate jurisdiction of the Federal Court.

Mr. M. R. Jayaker.

13,947. May I ask a question as regards the words “constitutional issue”? Will you kindly turn to paragraph 114 of the White Paper, the last part thereof, “In the event of a conflict between a Federal Law and a Provincial Law in the concurrent field, the Federal Law will prevail.” I suppose there will be an analogous provision the Constitution Act bringing in this provision under paragraph 114 ?—(Sir Samuel Hoare.) Yes.

13,948. Supposing that question arises which is embodied in the last part of this section which says, “In the event of a conflict between a Federal Law and a Provincial Law on the concurrent field, the Federal Law will prevail,” that would be as regards the interpretation of a certain section of the Constitution Act, as Lord Reading interpreted the words “constitutional issue”?—Yes.

13,949. Therefore it will be a constitutional issue in that sense ?—Yes.

13,950. Yet the question will arise in the concurrent field ?—Yes. It would go to the Federal Court.

13,951. Although it arises in the concurrent field ?—Yes. I think Mr. Jayaker is not distinguishing entirely between the settlement of a dispute arising out of the Constitution Act and the settlement of a dispute arising out of the interpretation of a law in the concurrent field. In the former case it would go to the Federal Court.

13,952. What I fail to understand is that in your memorandum you are willing to give an extended jurisdiction to the Federal Court from the one which is mentioned in the White Paper, in all cases where Federal Laws have to be interpreted, provided the Federal Law arises in List No. 1 ?—Yes.

13,953. And that, you say, is because you want some authority to co-ordinate different interpretations which may be

placed by different courts in the States and in the Provinces ?—Yes.

13,954. How is the necessity for such co-ordination less in the case of laws which are common to British India in the concurrent field and whose distinguishing feature is only this that the States do not come in ?—But that is a very big distinguishing feature, it seems to me.

13,955. How are you going to co-ordinate all those Laws ?—By the Privy Council until you get the supreme court side in being.

13,956. I thought you were going to create a court intermediate between the Privy Council and the Indian Courts ?—Yes, exactly, but I was not sure whether Mr. Jayaker meant at once or whether he meant when this second bench of the Federal Court is in being.

Mr. M. R. Jayaker.] No the Federal Court is going to be an intermediate court between Indian courts—I am using the word “Indian” because Provinces and States come in—and the Privy Council. If so, why deprive the court of the power of co-ordinating the interpretation of federal laws in the concurrent field ? Why drop it out altogether and refer it to the Privy Council direct ?

Marquess of Reading.

13,957. He has given the reason for that ; it would multiply appeals so much ?—(Sir Malcolm Hailey.) I think the Secretary of State has already given the answer to that. We do not wish to flood the Federal Court with a large number of references in the first instance but we do provide that ultimately, if the legislature so decides, it can bring the whole of the concurrent field as well as the Provincial field within the sphere of Federal Court decisions and, therefore, the Federal Court to that extent would be, as Mr. Jayaker said, an intermediate court for other purposes between the Indian Courts and the Privy Council, but that is a secondary stage which should be taken at the option of the Indian legislature when they find it to be necessary and also find that they could justify the expense.

Mr. M. R. Jayaker.

13,958. That cannot happen for several years and during that period in all these



questions the Indian litigant will have to undertake the expense of coming to the Privy Council while all the time there is a Court sitting in Delhi or elsewhere which is capable of deciding these questions?—That may be the ease but the Indian litigant would be under no disadvantage under which he has not laboured for many years past and the immediate constitution of a Federal Court on the lines indicated by Mr. Jayaker would undoubtedly place at once a very heavy expenditure on the Federation. It would also to some extent alter the character of the Federal Court merely by the extension in its size, and on account of the very great attention that would have to be paid to purely British Indian cases, cases which now for the most part stay with the High Courts or only occasionally go to the Privy Council—considerations therefore not constitutional but largely practical. Do you wish at the outset to flood your court with all these appeals and can you afford the extra judges required to try them? The proposal set forth in the Secretary of State's Memorandum is merely to leave the decision of that question to the option of the Indian Legislature at some future date.

Earl Peel.

13,959. You use the phrase "flooding the court with these cases". Is that not rather a liberal phrase, because we were told; were we not, at an earlier stage that really these concurrent laws would be very few and they would only arise as a method as it were, of putting a seal upon a sort of agreement between the Provinces that they wanted legislation of a particular character. Surely there would be very few of them and is not the question of flooding the courts with appeals in these cases rather a strong statement?—They deal with the whole of our major codes and they would therefore, in effect, afford a means of appeal to the Federal Court against a large number of important decisions of the High Courts and I think there would be a very general agreement that whereas you could look forward to some restriction in the cases which would come before the Federal Court on its constitutional side and its purely Federal side, yet I think that all lawyers here at all events

would agree that the immediate extension of the powers of the Federal Court to try, on appeal, cases in the concurrent field from provincial courts would undoubtedly lead to a volume of litigation far in excess of that which would be involved in the two original powers, the constitutional and the purely Federal powers.

13,960. May I ask one other question on that point? I think it is admitted that there is a great deal of opinion against having two courts, a Federal Court and a Supreme Court. Is not this almost forcing forward the question of a Supreme Court too much, because if these cases are exempted from coming before the Federal Court, with the obvious difficulties that arise in having different sets of interpretation and all the trouble of an appeal to the Privy Council, is it not likely that that will force forward the enabling powers to set up a Supreme Court? It is almost forcing it to be put into action as soon as possible, is it not? —(Sir Samuel Hoare.) I do not know whether that is so or not. My own view is that there will be a necessity for a Court of some kind to do the kind of work that we contemplate for the Supreme Court, and that unless there is a body of that kind the Federal Court in its Federal sense will be swamped. Our proposal differs from the White Paper proposal only in this respect, that we keep the two branches together instead of having them separate. All the evidence I have heard on the subject goes to show that having them separate which was a conception that was very much urged in some of our former discussions, would almost inevitably lead to constant disputes between these Courts. Our proposal is intended to keep the two together. Whether in the form that we have made it now it is more likely to bring into being the Supreme side of the Federal Court or not, I cannot say; I do not see why it should. I think on the whole it is less likely to.

Marquess of Salisbury.

13,961. I confess I was afraid, when I was trying to put my questions, that the Memorandum involved a certain limitation on the right of appeal as compared with the White Paper, but I gather that

the Secretary of State says that that is not so?—That is not so.

13,962. I do not know whether it is not a great impertinence in me to make a suggestion, but I am not sure how far other members of the Committee are as little clear as to the final result as I am. If, however, there is any ambiguity, I wonder whether the Secretary of State will consider making a graph, like a pedigree, showing how the appeals lie from the various Courts in a graphic form, so that we might have it before the Committee, putting the High Courts, the State Courts, and then leading on to the Supreme Court or the Federal Court, as the case may be, or to the Privy Council, and showing how the appeals will lie?—Yes, I think I could do that.

Marquess of Reading.] The only difficulty is that it is not so much a question of showing the Courts as showing the subjects that come before the Courts.

Marquess of Salisbury.] You would have to add a little letterpress as well.

Marquess of Reading.] Yes. That is where your difficulty comes. You are not changing anything otherwise except that you are instituting for the first time something in the nature of a Supreme Court on what I may call Federal questions, meaning by that Constitutional questions and the interpretation of Federal law. That is all you are proposing to do, I understand, but you add to it a power which at present is only a power to the Legislature if it chooses to extend that, and it may extend it to the furthest degree of making the Federal Court the Supreme Court for all-India, so that all appeals would be able to proceed from a High Court to that Supreme Court. That is something which you are only giving the power to do in this White Paper and Memorandum, but you are not now, as I understand, seeking to establish anything more than this Federal Court, and the Federal Court deals with particular subjects. It is not so much the Courts from which the appeals come; it has an original jurisdiction which is exclusive and then it has a jurisdiction in appeal. The jurisdiction in appeal presumably would be the same as if it came to a Supreme Court. But I think, if I may say so. I follow what is in Lord Salisbury's mind: in order to make it

clear you would have to have some letterpress explaining the limitations of the subjects.

Marquess of Salisbury.

13,963. I have made the suggestion. The Secretary of State will consider whether it is a possible one?—Yes; and in the meanwhile let Lord Salisbury be generally reassured that there is no restriction of appeal at all in our proposals.

13,964. Before I finish my task, may I just take the Secretary of State to two other matters? In the first place, there are some phrases in the Memorandum saying that the Federal Court is to have no power to enforce its decisions. In paragraph 4 the Memorandum says: "In this connexion I should like to make it clear that it is not intended by paragraph 160 that the Federal Court should possess any power of Federal execution, either in British India or in the States. It will pronounce judgment on matters which come before it, but those judgments will be carried out and made effective through the agency of the Courts from which the matter before it came." Is that different from the practice in this country?—No, I am told that that is the practice of the Privy Council.

Marquess of Reading.

13,965. That is quite right; that is the practice in the House of Lords and in the Privy Council?—We have modelled it upon the practice here.

Marquess of Salisbury.

13,966. The phrases are that they are able to give a binding decision but they are not to have any executive power?—I understand what happens, speaking as a layman, is that the Privy Council or the House of Lords give a decision and the subordinate Courts have to carry it out.

Marquess of Reading.

13,967. The House of Lords and the Privy Council would not have the machinery to put into execution all that. It is the ordinary course. The House of Lords would pronounce a decision; that is put into operation by the other Courts

by the executive powers and the officers which they have for that purpose. As I understand, it is exactly that scheme which you have in mind ?—Yes.

Lord Rankeillour.

13,968. Is that so in the United States with the Supreme Court, do you know ? —I could not say offhand. I am not sure. Anyhow we have based it here upon our own procedure.

Lord Chancellor.] Yes, it is our own procedure, and if you look at Section 163 on page 78 it bears out what the Secretary of State says.

Lord Rankeillour.] But we are not a Federation, and India and America are.

Lord Eustace Percy.] I think I can answer the question about America. The Supreme Court has no executive power; it executes either through the Federal Court in the States or through the State Court, according as the appeal has come from the Federal Court or the State Court.

Marquess of Reading.] It is just the same as in this country.

Lord Eustace Percy.] Yes, except that they have got Federal Courts. Of course, it will not be the case in India.

Marquess of Salisbury.

13,969. There is only one other question which we have avoided up to now, namely, an appeal in criminal cases. I understand the suggestion of the Secretary of State is to set up a Court of Criminal Appeal ?—We leave it to the discretion of the Indian Legislature.

13,970. I should have said that, yes. But until the Indian Legislature exercises that right, what will be the position as to criminal appeal ?—(Sir Malcolm Hailey.) The position will be exactly the same as it is at present, in which the appeals do not go as appeals beyond the High Court, though there is a reference to the Privy Council, and that would remain in exactly the same position as it is at present.

13,971. Then one last question on this : If the new Legislature do set up a Court of Criminal Appeal, will there be special judges for it or will judges be told off for it, as is done in England ?—(Sir

Samuel Hoare.) I do not know about that.

13,972. It is only a question of expense ?—(Sir Malcolm Hailey.) It would be necessary to have special judges, because the Court would have to sit in some centre at which judges would not be available from their ordinary work. Undoubtedly if you have a Court of Criminal Appeal in India there would be a very large number of cases indeed coming before it, and you would have to have a separate Court with separate judges for the purpose. (Sir Samuel Hoare.) You see, Lord Salisbury, the position depends a good deal upon the number of cases; for instance, if you take murder cases I am told that in a certain Province last year there were five hundred.

13,973. Five hundred murders ?—Yes; I will not specify which Province it was

Marquess of Reading.

13,974. Only just one question on the last matter that you were dealing with, Secretary of State, to clear it out of the way. Of course, this question of the criminal jurisdiction again does not arise in relation to the Constitutional enactment of a Federal Court; it does not arise on that at all ?—No.

13,975. It only comes under the enabling powers to the Federal Legislature ?—Yes.

13,976. Whatever those may be, power is given to the Legislature to decide what kind of Court of Appeal it will have in criminal and other matters, and, of course, they will take into account the question of expense and practical considerations. That is left entirely out of what we have to decide on the Federal Court question. That is right, is it not ? —Yes. What has very much impressed itself upon my mind is the necessity of keeping the criminal cases out of the Federal Court and the Supreme Court. If you once let them in, the Federal Court and the Supreme Court sides will be swamped by them.

13,977. There are only one or two other matters after the long discussion we have had that I want to ask you about. Just one question about paragraph 1 of your Memorandum in order to clear it up. At the top of page 2 you say : "the

Federal Court should have power to decline summarily to entertain any appeal, or any application for leave to appeal, where it appears to them vexatious or frivolous, or made only for the purposes of delay." I do not want to discuss the exact form of drafting there, which I think is a little open to criticism, but purely on technical grounds what is intended, I suppose, and if so I leave it at that, is that power should be given to the Court to make rules enabling them to deal themselves with vexatious appeals?—That is so.

13,978. I do not want to discuss the technical language—it is a little difficult exactly as framed—unless you mean that it is to be by rules which the Court will frame?—Yes.

13,979. Then, of course, the Court will by its rules meet all the difficulties that I have in mind, and I need not ask you anything about them. Now I want to put one or two questions to you about the States, because, of course, they do introduce a feature which requires careful consideration and which interests the States. On the constitutional issues no question arises at all, as I understand, and it has been understood from the first that the States would be bound, just as the Provinces and the Federal Government, by any decision on a Constitutional issue. That is right, is it not?—Yes.

13,980. No question has arisen upon that?—No.

13,981. Of course, on the extension of it, which you have now introduced by your Memorandum—that is giving the Federal Court the power and the obligation to interpret Federal laws—the States do become involved?—Yes.

13,982. We shall hear from them what they have to say with regard to it. I only wanted to be clear about this. I am only asking the questions about the interpretation of Federal laws. I leave the Constitutional laws out of question. On the Federal laws, assume that a State in its Supreme Court, whatever it may be in that State, has made a pronouncement of the interpretation on a Federal law: what is proposed now is that a question of that character could be dealt with and should be dealt with if properly brought before it by the

Federal Court? That is involved necessarily, is it not?—Yes.

13,983. Of course, that does involve the assent of the States to it?—Yes.

13,984. Then I presume also from what you have said that the execution of a decree of the Federal Court, assuming that it did involve a State, would be left to the Courts and the executive powers of the State?—Yes.

13,985. It follows from what you have already indicated in your answers to Lord Salisbury. It makes it perfectly plain—and I think it is desirable that the States should understand that—that it is not suggested in any way that there should be officers entering the States for the purpose of enforcing a decree of the Federal Court, but that it would be left to the officers of the State to execute such a decree. That is quite clear, is it?—Yes.

13,986. Therefore the only interest that the State would have or the only possible conflicting interest on the matter is, I suggest, that the Federal Court would have the supreme voice upon not only Constitutional issues but upon the interpretation of the Federal laws, and would if necessary override a decision of a State Court just as it would of a High Court in India. There is no difficulty about that?—No.

13,987. That is, as far as I can see from your Memorandum and thinking about it, the only way in which the States would be involved. What I am suggesting is that really the States would be only affected by this new proposal to the extent that it would mean uniformity as regards not only Constitutional issues but the interpretation of the Federal law?—Yes.

13,988. And not only uniformity but exactly the same position for the State High Court as for the Provincial High Court, and indeed in the case of the High Court of Calcutta which is in a different capacity, exactly the same position would apply, and the Federal decree would be the Supreme decree, which would mean uniformity throughout the State and the Provincial Courts. That is the position, is it not?—Yes.

*Marquess of Salisbury.*

13,989. Lord Reading will allow me, I am sure, just to call attention to the fact that in dealing with that in the Memorandum the Secretary of State uses the preliminary phrase, "As I understand," so that he does not know for certain that that is so. It is in paragraph 3?—I do not wish undue importance to be attached to a phrase of that kind. I do not much mind whether it is in or out. It has not got any sinister intention behind it."

13,990. No; it is only that I want to find the limits of what the Committee are to understand?—Perhaps it would be better if I took it out. It is not meant to imply that. I wish to say no more than that I have never heard any objection urged to this proposal.

*Lord Chancellor.*] I think it is only a technical point as to machinery. Assume for the sake of argument that the Federal Court gives a Judgment which affects a State or which affects a person in a State. In most cases when you are dealing with an outside body what happens then is this, that the State has machinery under which that Judgment can be registered, and when that Judgment of the Supreme or Federal Court is registered in a State, then the State itself enforces the registered Judgment, and in that way the sovereignty of the State is preserved and unanimity also is secured because they agree to the Judgment, but they are the sovereign—the people who enforce the registered Judgment. It is not quite the same in England, because when the House of Lords pronounces a Judgment here, there being no executive machinery, they return it to the King's Bench and the King's Bench enforces it through their executive machinery which you assume (I do not want an answer now) will enforce the registered Judgment.

*Marquess of Reading.*

13,991. Secretary of State, I want just to go back for one moment to clear up, I hope, a matter which has been much discussed this morning. I am referring to paragraph 7 of your Memorandum; that is with respect to matters in the concurrent field. I do

not want to go over the ground again; I only want to put to you as I understand it what the position is. I think I have got it right from what Sir Malcolm said, that is to say that in these matters in the concurrent field are included, of course, everything that is at page 119; that is List III. That is right, is it not?—Yes.

13,992. If you look at List III you will see that it covers an immense field. I am only calling attention to it, because I myself asked a question as to why this was done, and Sir Malcolm gave an answer which at any rate for the moment seemed to me satisfactory. I just wanted to explain why, if you look at it, you see, for example, jurisdiction powers and authority of all Courts, civil procedure—all matters now covered by the Indian Code of Civil Procedure, and a number of other matters—criminal procedure and so forth; I do not want to go right through it. In substance, it covers almost every form of litigation and issue that could come before the High Court. Therefore, as I understood Sir Malcolm in answer to a question put by myself and from the Secretary of State's explanations, the reason why you have excluded the concurrent field here is not on any matter of principle, but because if you were to include it you would be doing the very thing which you are seeking to avoid, that is to say, giving a multiplicity of appeals which would tend to swamp the Federal Court and consequently to make it difficult to get decisions on the Constitutional issues and the Federal laws. That is as I understand it?—Yes. There are really two reasons. The first reason is to keep the Federal Court for cases in which the States and British India are both involved; the States are not involved in the concurrent field. The second reason is the reason just stated by Lord Reading, that we feel that if we brought the concurrent field into the Federal jurisdiction we should swamp the Court.

13,993. But you are doing nothing which would exclude from the Indian Legislature the power, should it desire to exercise it, of extending the right of appeal to all the concurrent field?—Nothing.

13,994. But that depends upon them and whether they are prepared to shoulder the expense and inconvenience of it; that is how it stands?—Yes.

13,995. The answer to me was satisfactory, and I was just anxious to see that one understood it. I think really there is only one other question that I want to put to you with regard to it, and that is on the criminal side. All that is excluded, I understand—not expressly perhaps but nevertheless is intended to be excluded by your proposed legislation constituting the Federal Court?—Yes.

13,996. That is to say, the criminal law does not enter into it at all. What I was rather wondering about that was this. I am not pressing for an answer; I dare say it has already been carefully considered; but you might have, might not you, on a constitutional issue some question which would involve either the Criminal Procedure Code or perhaps the criminal law. It is not impossible, as it seems to me, that such a question could arise. If you do intend to exclude criminal matters from it, would it not, therefore, be necessary to exclude them by your Constitution Act? I am not sure what the intention is, and indeed I do not press for an answer, but it does involve consideration?—(Sir Malcolm Hailey.) It is clear that the Constitution Act must provide for the criminal side in the following respects. It must in the first case make it clear that if any question of the interpretation of the Constitutional law arises in respect of criminal law that must go to the Federal Court even though in other ways it has no criminal side, but in the provisions of the Constitution Act also which enable you to constitute a Court of Criminal Appeal it will also be necessary to provide certain limitations as to the extent of those appeals; it will also be necessary to provide for the exclusion after that Court is constituted of the authority of the Privy Council, because the jurisdiction of the Privy Council would be removed if a Court of Criminal Appeal were constituted in India.

Marquess of Reading.

13,997. Would it? Why do you say that, Sir Malcolm? Why do you say

that the jurisdiction of the Privy Council would be removed? It would only be so if there were an Act of Parliament here that removed it?—I should explain that it is proposed that it should be removed. It is proposed that the appeal to the Court of Criminal Appeal shall take the place of the reference to the Privy Council now, and that would have to be provided in the Constitution Act.

13,998. Are you suggesting that that will be in the Constitution Act?—(Sir Samuel Hoare.) It is already in paragraph 167 of the White Paper. (Sir Malcolm Hailey.) In paragraph 167 it is already proposed.

13,999. That brings me to the very point I wanted to put to you on paragraph 167?—That is why you will have to make special provision for those points in the Constitution Act itself.

Mr. M. R. Jayaker.] On that point about paragraph 167, may I ask the Secretary of State a question on the last two lines: "In criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise." Is it possible to do away with this right—the prerogative of His Majesty to give leave by special leave to hear an appeal? Is it possible to do away with that?

Marquess of Reading.

14,000. Secretary of State, that is just the point that I wanted to put to you. That does involve a very important matter, I suggest to you. Hitherto it has always been the right to appeal to His Majesty by an appeal to His Majesty in the Privy Council, and it has been very much prized. Of course, the exercise of it is very limited, and I do not want to go into that, because, as the Lord Chancellor knows perfectly well, it has been laid down very clearly what would happen on application to the Privy Council for special leave to appeal; but I do suggest to you that although you may say there is to be no direct appeal to the Privy Council because you are putting up an intermediate Court which is the Court of Criminal Appeal, you should not take away the right of appeal to the Privy Council. Limit it as you may think right, but surely there ought

to be some right of appeal or of special leave of appeal; I do not want to go into cases?—(Sir Samuel Hoare.) Lord Reading will no doubt remember from his experience the difficulties that are constantly arising under the present system. Perhaps it would help the Committee if I read to them this short note about the position, because it will bring to their minds the practical difficulties with which every Viceroy and every Secretary of State has been faced for a very long time. The effect of the Proposals in paragraphs 166 and 167 of the White Paper, taking into account the modifications suggested in my Memorandum, circulated yesterday to the Committee, is that (if and when a separate Court of Criminal Appeal is set up in British India under the powers to be given by the Constitution Act): (a) the right of appeal to the King in Council in criminal matters, whether by special leave or otherwise, will be abrogated (paragraph 167, last sentence); but that (b) an appeal will lie as of right to the Indian Court of Criminal Appeal against death sentences or against orders of a High Court reversing an acquittal on a criminal charge; and (c) an appeal will lie to the same Court in other criminal cases if a certificate has been given by the High Court of the Province that the case is a fit one for a further appeal (paragraph 166, last sub-paragraph). The Privy Council has repeatedly pronounced that it is not a Court of Criminal Appeal and that it will grant leave to appeal to itself in criminal matters only (here I quote the actual words of its pronouncement) "if it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done." None the less an average of some 30 applications for leave to appeal against capital sentences are lodged every year, and, although the applications are almost invariably rejected, the result of an application being filed is that it is, of course, necessary to postpone execution of the sentence and if, as is usually the case, the lapse of time between the filing of the application and its disposal by the Privy Council is considerable, the authorities in India are frequently faced with the necessity in the end of con-

sidering the propriety of commuting the sentence into one of transportation for life owing to reluctance to execute a condemned prisoner who has been awaiting the execution of his sentence for a prolonged period. It has to be remembered that unless a death sentence is imposed by a High Court itself sitting as a Court of Session—which is the case with a very small proportion of the number of death sentences imposed in India—the sentencing Court is that of a Sessions Judge and that every such sentence has to be confirmed by the High Court of the Province before it comes final. The High Court in considering a reference from a Sessions Judge for confirmation of a death sentence necessarily goes into the whole facts of the case, more especially as the accused person almost invariably appeals to the High Court against his sentence, the appeal being heard at the same time as the reference by the Sessions Judge for confirmation. In the event of the sentence being confirmed by the High Court and the accused's appeal being rejected, it is then open to the convict to lodge an application for commutation of his sentence, under Section 401 of the Criminal Procedure Code, first to the local Government, and if that is rejected, to the Governor-General in Council, and the convict in almost every case avails himself of this right. Further than this it is open to the convict to apply to the Governor-General to exercise on his behalf the delegated prerogative power of pardon.

14001. I agree and, as you say quite rightly, I am very familiar with the difficulties that have arisen in that respect, but the point I am putting is not affected really, I think, by that. What I am suggesting to you is that you should not shut out the right of appeal, that is, to the Privy Council for special leave to appeal. You may limit it if you will to particular cases, but by the Provision in the White Paper you shut it out entirely and the passage that the Secretary of State read, I think, only confirms what I am putting. I mean that in a large number of cases, the Judicial Committee refuses it generally on the ground that they will not interfere and they will not listen to discussion on it unless a

miscarriage of justice has arisen it may be from a refusal to consider various matters into which I do not want to go, but out of those thirty cases, some have been granted. As the Secretary of State read almost all have been refused; I quite agree. I could give instances from my own experience at the bar where leave was granted and it is only in those cases that you would get the delay which you have suggested and which does occur, I know. All I am suggesting to you is that you should reserve the right of special leave to appeal to the Privy Council, which is very very rarely exercised by the Court, but nevertheless, it is in the King's power to intervene when there is Petition to him from any person condemned in India, and I very much myself dislike taking away that right for Constitutional reasons. I hope you will consider that?—Certainly we must take careful account of what Lord Reading has just said. The practical difficulty is to find any means of limiting this appeal. As long as there is an appeal, sentence must be suspended during the period of the appeal, and, I think I am right in saying that every Secretary of State and every Viceroy, practically without exception, has found the present state of affairs most unsatisfactory.

14,002. I agree there are difficulties, of course. May I make one suggestion?—The sentences must be suspended on application.

14,003. Certainly?—And it may take quite a long time before the Privy Council gives its decision.

14,004. It may take a month or two, I quite agree, because they may not be sitting, but otherwise they hear them, as I have always understood, rapidly. When they have had an application for special leave to appeal, it has been heard at once?—We have had one or two difficulties within the last year or two arising from this delay.

Marquess of Reading.] Will some attempt be made to deal with that, and I would ask the Secretary of State and his advisers to look at the limitations that are placed on the right of appeal nowadays from the Court of Criminal Appeal in this country. When we established the Court of Criminal Appeal in this country, presided over by the Lord

Chief Justice and other judges of the King's Bench Division, its decision was final and there is no appeal unless it is certified that there is a question of law which has arisen which is of general interest, and only on the Attorney-General's certificate it can go and has gone to the House of Lords. That is a very limited right of appeal, I agree. Generally speaking, the Court of Criminal Appeal's decision is final. I beg that attention should be given to this, that in some form or other we should not shut out from the Indian subjects whatever Courts we may be instituting this right of appeal to the King.

Lord Eustace Percy.] May I just ask Lord Reading this: Surely, as I understand Lord Reading's argument, it is of the essence of the Constitutional point that the King's right to intervene should be unlimited.

Marquess of Reading.] That is what strikes me.

Lord Eustace Percy.] Then you cannot apply to that right any limited matters that you apply already to the Court of Criminal Appeal.

Marquess of Reading.

14,005. You do. It is not an unlimited right because it is exercised in certain ways in which certain of us who practise are familiar and is undoubtedly limited. There may be an appeal to the Judicial Committee of the Privy Council which is the way in which it is dealt with, and, as the Secretary of State has said, in almost every case, the appeal is refused because the Judicial Committee thinks there is no reason to grant it, but where they think there is they do grant it, and, in that way, you do preserve the right of the subject, and that is what I am anxious to protect?—Of course, we would look with great attention into any point which Lord Reading makes upon a point of this kind. The difficulty, which we have not ignored, is to find a means of limiting this appeal within the kind of limits that he has just suggested.

Sir Phiroze Sethna.

14,006. Is not this right of appeal continued to the Canadian subject, although there is a Supreme Court there?—I do



not know about Canada. In Australia the appeal is barred unless the High Court gives its certificate.

Mr. M. R. Jayaker.

14,007. What I want the Secretary of State to consider, with his Constitutional advisers is a point somewhat different from the one Lord Reading raised. It being part of the Royal Prerogative, can you take away the right by legislation? That is what I ask the Secretary of State to consider with his advisers. Apart from the expediency of maintaining some contact between the Indian litigant and the King in England, do not you think it is desirable that this right of contact between the litigant in India and His Majesty, the King, in England, should be maintained?—I would like to look into the difficult question of prerogative. It is clear that changes can be made in the manner in which the prerogative is exercised from the Australian experience, where the High Court apparently controls the cases that may go to the Privy Council.

Marquess of Reading.

14,008. I am not sure if you will just look at your words that you do (I rather think that you do not) interfere with the prerogative because in paragraph 167 the words in question are "in criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise." That does not interfere with the prerogative?—No, it does not.

14,009. Prerogative is a much bigger question altogether. It does not touch that, but it does touch the points which I am putting to you which are one way in which the King may choose to exercise his prerogative by referring to the Judicial Committee of the Privy Council?—I am reminded that there have, as a matter of fact, been perhaps two or three cases during the last thirty years, in which the Privy Council have given a decision against the decision of the High Courts.

Earl of Lytton.

14,010. And there has been great abuse of the privilege in almost every year?—Constantly.

Marquess of Reading.] You mean the appeals?

Earl of Lytton.] In appeals.

Sir Austen Chamberlain.

14,011. Is it not the case that the Privy Council itself has repeatedly commented upon the number of appeals which never ought to have come before it, and has made representations that the practice of appealing in this, shall I call it, reckless way, really amounts in many cases to denial of justice to the litigant?—We have constantly had complaints of this kind.

Sir Austen Chamberlain.] I only want to put that as the other side of the picture, because it was very much impressed upon me even in the couple of years that I was Secretary of State.

Marquess of Reading.

14,012. These are all cases which arise, are they not, on the special leave to appeal?—Yes; the Privy Council has constantly protested against the present arrangement, and it has constantly stated the fact that it is not a Court of Criminal Appeal.

14,013. That is why I suggested to you that you might look at our law for the purpose of seeing how far you should limit it?—Yes, always remembering the great practical difficulty of dealing with a very large number of cases, running into many hundreds a year, it may be, and with the necessary delay of bringing a case from India here.

14,014. If you will forgive me putting it, Secretary of State, you would not have hundreds of cases a year applying for special leave to appeal to the Privy Council?—I am perfectly willing to look into the point. So far we have found great difficulty in making a limitation.

Marquess of Reading.] I think you said just now you thought there were thirty in one year.

Sir Hari Singh Gour.] May I draw your attention to the present state of the law in Section 84 (1) (a) which lays down "A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons (a) in a case of an Act of the Indian Legislature

or a Local Legislature, because it affects the prerogative of the Crown." We have at the present moment authority in the Government of India Act which entitles the Indian Legislature to make a law though it may affect the prerogative of the Crown.

Mr. Zafulla Khan.] Surely in this case that possibility does not arise because whatever view is finally taken the Act will be passed by Parliament.

Sir Hari Singh Gour.

14,015. *A fortiori*?—I always hesitate to give an answer on the spur of the moment about anything that affects the prerogative one way or the other.

Sir Hubert Carr.

14,016. The Indians attach very great importance to the right of appeal to the Privy Council in criminal cases and they did put it before the Committee in giving evidence. It is on the file so I will not bother by referring to it now but it is a right that they feel very deeply about although it is one which they very rarely exercise?—I will certainly look into the question again after the discussion we have had this morning.

Marquess of Zetland.

14,017. Secretary of State, arising out of the questions asked by Mr. Jayaker, I understand that it is your intention that the question of the possible establishment of a Supreme Court side of the Federal Court shall be left to the determination of the future Federal Legislature in India. Is that so?—Yes.

14,018. In other words, you are prepared to give to India in this matter a greater measure of self-determination than apparently Mr. Jayaker is anxious to accept?—That may be so.

14,019. With regard to what you said as to the two reasons for excluding Acts in the concurrent field of legislation from the appellate jurisdiction of the Federal Court, I quite appreciate the first reason which you gave—as a matter of fact, I think you gave it second—namely, that you might absolutely overwhelm the Federal Court with work from the start; but I also understood you to say that

one reason for excluding such legislation from the appellate jurisdiction of the Federal Court was that it was desirable to restrict that jurisdiction to matters in which the Provinces of British India and the Indian States were jointly concerned. Was that so?—In which the Federation as a whole were concerned—I would rather put it that way.

14,020. Is not that the same thing?—I think it is rather wider. I thought you restricted your question to the cases in which the Provinces were involved. I would rather put it wider.

14,021. Those matters in which the Provinces of British India and the Indian States were jointly concerned?—Yes.

14,022. I understood that to be your reason?—Yes.

14,023. But you have not overlooked the fact that List I has been definitely divided into two parts?—Yes.

14,024. One part of it including matters which are really restricted to the Provinces of British India. But you are not suggesting that in those matters there should not be an appeal to the Federal Court, are you?—In which matters? I do not quite follow Lord Zetland's question.

14,025. You are not overlooking the fact that in List I of the subjects, there is a division in two parts?—Yes.

14,026. Namely. Items No. 1 down to No. 48, which are matters which are the concern of British India and of the Indian States?—Yes.

14,027. And Nos. 49 to 64 are the concern of the Provinces of British India only?—Yes.

14,028. You are not suggesting, are you, that matters arising under those heads, namely, items Nos. 49 to 64, should be excluded from the appellate jurisdiction of the Federal Court?—No; I am not.

14,029. I was not quite clear?—They are, you will see, all of them potential Federal subjects to which the States may accede in the future even if they do not accede at the beginning.

14,030. There is only one other question for information. I understand that

no decision by the Governor-General or by a Governor of a Province taken at his discretion, would be challengeable in any Indian Court. Would it be?—It could only be challengeable upon the ground that it was outside the Constitution, that in the Constitution Act there was no provision enabling him to give a decision. Is not that so, Sir Malcolm? (Sir *Malcolm Hailey*.) The act of the Governor-General taken in his discretion would be expressed as an act of his Government and it could only be challenged in the Court if an act of the Government in itself could be so challenged as lying beyond the law. The fact that it was taken by the Governor or the Governor-General under his special responsibility or his special discretion would not alter its character as an act of the Government itself and it could only be judged, therefore, as an act of Government.

14,031. In which court would proceedings be taken in a case of that kind?—In the court which had jurisdiction over that particular class of act.

14,032. The High Court in the case of a Province?—Yes; I mean it would be challenged on the ground that such-and-such a law did not apply to the act of Government, and if the cause of action arose within the Province then it would come before the courts of the Province.

14,033. And that, of course, would be appealable to the Federal Court?—It would be appealable just as a case against any person would be appealable as an evasion of the law.

14,034. Then only one other question. I assume that no action by the Viceroy, as distinct from the Governor-General in his relations with the native States, would be challengeable in an Indian court?—Within the sphere of paramountcy?

14,035. Yes?—No, not unless he broke a law in doing so.

Lord *Rankeillour*.

14,036. Secretary of State, do not you recall that early last year, or possibly late in 1931, a capital conviction was quashed by the Privy Council with very severe reflections upon the convicting

court?—(Sir *Samuel Hoare*.) Yes; there was a case.

Sir *Hari Singh Gour*.

14,037. The Patna High Court?—Yes.

Lord *Rankeillour*.

14,038. Then might I ask this about procedure: As I understand it (and, of course, I am speaking only as a layman) a litigant coming to the Federal Court must plead a constitutional issue?—Yes.

14,039. No question of fact will arise to be determined by the Federal Court?—(Sir *Malcolm Hailey*.) If it were a constitutional issue under paragraph 155 as between a Province and a State, then the Court would go into questions of fact; that is because it has original jurisdiction.

14,040. But not by way of appeal?—In the appellate jurisdiction it would be an appeal on a point of law.

14,041. And that limitation is safeguarded by the necessity of stating a Special Case?—Yes.

14,042. Now supposing the Supreme Court side, as it has been called, of the Federal Court were set up and a case comes up in which a constitutional issue has not been pleaded to the Supreme Court side of the Federal Court, could an amended plea be entered there in view of fresh investigation or through the ingenuity of counsel, that in fact a constitutional issue was involved?—(Sir *Samuel Hoare*.) Yes, and it would be open to the Federal side of the Court to withdraw it to the Federal side of the Court.

14,043. In other words, the Federal side of the Court might compel the Supreme side to refer the constitutional issue which then emerged to itself?—Yes, that is so, and no doubt cases of that kind would be provided for under the rules of the Court.

Marquess of *Reading*.

14,044. It would be only one court, would it not?—It would only be one court.

14,045. It would always be the Federal Court?—It would be the Federal Court withdrawing a case from one side of itself to the other.

*Lord Rankeillour.*

14,046. What in practice will happen if counsel suddenly pleaded a constitutional issue—would the jurisdiction of the Supreme Court side be ousted from that moment until it had been decided by the other side?—It would depend upon the rules of the Court.

14,047. And the rules of the Court might provide that it could first be argued in the Supreme Court side with an appeal to the other side?—It might be argued, I suppose (I am speaking as a layman) that as soon as the issue was raised an issue would be taken to the Federal side of the Court rather than to the Supreme side of the Court.

14,048. It is an obvious difficulty that will have to be provided for?—I would put it this way to Lord Rankeillour, that if there is a difficulty it is much less a difficulty having it dealt with by two branches of one court than by having two quite separate courts, namely, a Federal Court and the Supreme Court.

*Marquess of Reading.*

14,049. I was just going to put it to you that a good deal of conclusion has been caused by talking of the Federal Court and the Supreme side of the Federal Court. It is one Court. The Judges who will be appointed will be, I understand, Judges of the Federal Court, and I suggest that no difficulty would arise because if a question comes up it would have to be dealt with by the Federal Court. You would not have to refer it to another Court for that purpose?—That is so.

*Marquess of Reading.*] They would all be Judges of the Federal Court as happens, of course, now. In the Judicial Committee of the Privy Council they may be sitting in two different bodies and taking two different sets of appeals, but it is the same Court.

*Lord Rankeillour.*

14,050. Would not it be better to find some other name than the Supreme Court side of the Federal Court?—I think it would very likely. I am not using a term of art at all.

14,051. Then may I ask another thing. What provision will there be, and here

I speak as a very ignorant layman, for some kind of interim proceedings. Supposing under paragraph 155 a State pleaded that the authorities in some Province were exceeding their rights or were acting *ultra vires*, could they go to the Federal Court and obtain an interim injunction?—I would like to think about a question of that kind. I am not sure that I appreciate fully what might be its bearings.

14,052. I will give an example. Supposing the police of a Province interfered with a passage of arms into a State, or something like that—that being a Federal matter and a grievance was experienced on that account in the State, could they then go and obtain an interim injunction restraining that proceeding until the matter had been decided?—(Sir *Malcolm Hailey*.) It would be exceedingly difficult to do that because we envisage that under paragraph 155, in pursuance of its original jurisdiction in these what I may describe as State matters, the Federal Court would only give a binding decision: that decision would have to be binding, for instance, on a State or a Provincial unit concerned. It would be assumed that as soon as a decision was arrived at the State would bind itself to carry it out as a State. Great difficulty would arise if the Court were given a power to take executive action by way of injunction against any particular State or Department of State.

14,053. I am thinking the other way about. I am thinking of a State being the aggrieved party?—(Sir *Samuel Hoare*.) In either case the difficulty would be the same, I think. (Sir *Malcolm Hailey*.) It would be difficult to give a power to intervene where a Province was concerned by way of injunction procedure and not where a State was concerned; and there was a difficulty quite frankly as we saw it. It may be possible to devise some form of procedure by which injunction should be given effect to, but just at the moment, to be quite frank, we have not seen how that could be done.

14,054. Whoever was concerned in a matter of that sort could go to the High Court of a Province for an interim injunction?—They could not go to a High

Court of a Province in any matter with which Paragraph 155 deals, but there you have the exclusive jurisdiction of the Federal Court.

14,055. But in some other case?—That is always open to them now.

14,056. And that could stay the operation of the matter complained of until there was a decision?—Yes; the State has the right of going to the High Court of a Province now to ask that action should be taken under the law of the Province itself.

14,057. Otherwise, until the constitutional point had been decided and the High Court refused to grant the injunction, there would be no possibility of staying the proceedings until the issue had been decided?—No; otherwise there would be no possibility of doing it.

14,058. Then with regard to paragraph 156, it reads a little ambiguously. At first sight it might be thought to be contrary to paragraph 158. The words, "No appeal will lie under this provision" mean no appeal to the Federal Court; they do not mean no appeal from the Federal Court. That is right, is it not?—(Sir Samuel Hoare.) Yes.

14,059. Then there is just one other question about machinery. The question was raised as to the execution of judgments of the Federal Court. That would depend, I think you said, on the Court in which the action originally started?—(Sir Malcolm Hailey.) Yes.

14,060. In the case of something coming from the High Court of the Province the machinery would be that of the Provincial High Court for execution?—Yes.

14,061. In cases where Federal Officers were involved would they come in at all in matters of Customs and Excise?—They might do so, certainly, yes.

14,062. But in other cases it would be the purely Provincial machinery?—Yes.

14,063. If that be so would that be subject to the directions which we have already discussed under paragraph 125? Supposing any complaint of delay or of imperfect execution were made, would the Governor-General be able to give directions for execution under paragraph 125?—It is not contemplated that the

Governor-General would be able to give any directions as regards the manner in which a purely judicial High Court decree should be executed.

14,064. The sort of case I contemplate is that judgment is given in the Federal Court, it is registered in the Provincial High Court for execution, a complaint arises that the execution is unduly delayed or is imperfect: under those circumstances would it be the duty, or within the power, of the Governor-General to give directions that that judgment should be forthwith executed?—The power of the Governor-General is limited in paragraph 126 to certain classes of cases.

14,065. I am talking of paragraph 125?—That refers to the authority of the Federal Government.

14,066. The Secretary of State said that in this case it would want redrafting, but he really meant here the Governor-General in his discretion?—(Sir Samuel Hoare.) No—if you look up my answers. I think there are a whole number of questions arising under paragraphs 125 and 126, and I did not give a general answer of that kind.

14,067. I think, Secretary of State, really, on the face of it, you did, but perhaps you did not mean to?—Obviously, I could not have given a single answer on paragraph 125 because there are two or three issues in it.

14,068. I think you said that meant the Governor-General, and you referred me to some point in the Introduction?—(Sir Malcolm Hailey.) But apart from that, if I may say so, with regard to your immediate question, it would not be within the power of any executive authority to give directions as to the manner in which a judicial decree should be carried out.

[Lord Rankeillour.] That answers the question.

Major Cadogan.

14,069. I only want to ask the Secretary of State one question arising out of a sentence which occurs on paragraph 8 of his Memorandum: "Importance has been attached by eminent legal opinion in India to the desirability of ensuring that the Court of Civil Appeal for India if and when it is established, should be

established on sound lines, and that its Judges should be of a calibre to command respect." Am I right in taking it for granted that the substitution of a Supreme Court side for the Supreme Court, for which provision is made in the White Paper, would involve an economy of personnel? I am speaking, of course, of the number of Judges necessitated by the enabling power to set up a Supreme Court side being given effect to?—(Sir Samuel Hoare.) I think it should.

14,070. Lord Reading has just now said that the Court would be the same; the Federal Court and the Supreme Court side would be the same?—Yes, I would have said, speaking as a layman and basing my view upon a general conception of what is likely to happen, you would be much more likely to have fewer Judges in one Court than you would have if you set up two.

14,071. That would be an additional advantage of your revision of the White Paper scheme?—Yes.

Sir Reginald Craddock.

14,072. Secretary of State, there are only two or three points I want to raise at this moment. I am not quite clear as to what happens in respect of the small States which have entered the Federation. They have not Courts of their own of any great importance and in the small States such as I am well acquainted with in the Central Provinces the Chiefs themselves are nearly always invested with certain powers which do not extend to life and death, and very often are still more restricted, and in those States the criminal law is administered with the aid of the Political Agent who, for example, would be invested with the power of a Sessions Judges with regard to the State with which he is associated, and there must be a lot of minor States in India who would be included in the Federation but who have no very large or competent courts of their own. In that case does the Federal Court come in as regards those small States which have got no High Courts or anything approaching a High Court?—(Sir Samuel Hoare.) Sir Reginald's question dealt with to a great extent criminal cases. He will remember that the Federal Court

does not enter into criminal cases at all. Apart, however, from that aspect of his question, what we had hoped would happen with the small States would be that they would group themselves for courts. There has been some discussion upon the subject, and there is obviously a movement afoot in the smaller States to group themselves and to have a common Court for a number of small States.

14,073. That, if I may say so, is a very good idea, for States such as there are in the Central Provinces, otherwise, they would not have any machinery in their own States for civil cases—nothing approaching a High Court. Then there is just one word I want to say about the prerogative. The prerogative we are accustomed to is the prerogative of mercy, and that, of course, cannot be touched. It is not provided for in the Criminal Procedure Code. The petition for commutation of sentence is made either to the local government or to the Governor-General in Council?—Yes.

14,074. But since Lord Chelmsford's time the Viceroy has had delegated to him the exercise of the Royal Prerogative as well. Previous Viceroys had not got that prerogative and in dealing with any criminal case they simply dealt with it as Governor-General in Council. I need not go into the details of what that exactly meant, but since Lord Chelmsford's time the Viceroy could, apart from his Council, exercise on behalf of His Majesty the Royal Prerogative of Mercy. I presume that all that is in the White Paper and in your Memorandum on such subjects does not pretend to touch that particular prerogative?—No, it is not touched at all.

14,075. That would continue?—It remains intact.

14,076. There is one other question I would like to put to you, if I might, Secretary of State, and that is that it is well known I think that the question of having a Supreme Court in India has been discussed and debated for some time past quite independently of the present proposed Reforms or the new Constitution?—Yes.

14,077. Would it be correct to say that that case for a Supreme Court depends upon the same merits or demerits as might have existed without regard to the

setting up of a Federation? That is to say, that a Supreme Court has nothing to do with the Federal scheme and it is merely a question of whether it is expedient to multiply appellate Courts within India itself or to introduce a court between the High Courts and the Privy Council; that is to say that the pros and cons of that case are not changed by this new proposed Constitution, but the case for or against them is precisely what it was when the question was discussed prior to the Reforms?—Yes. I am not, of course, in such full possession of the arguments that have been used in the past for or against a Supreme Court. Speaking generally, I should say that the arguments for the Supreme Court were very much what they have been in recent years.

14,078. That is to say, not necessarily a part of the new Federal Constitution at all. It is a question to be decided on the merits of practical civil and criminal administration?—I would not like to give an answer Yes or No to a question of that kind, because I have got in my mind a feeling that the setting up of a Federal Court may make the setting up of a Supreme Court branch of it more necessary than it was before.

14,079. On the ground of economy and so on, with a Federal Court which is necessary under a Federal scheme, a Supreme Court, or the functions of a Supreme Court, could be brought in with rather less expenditure?—I see what Sir Reginald means. He and I are not in disagreement on this point. I think this plan of bringing the two together is a better plan.

14,080. Then there is one other point I would like to refer to. In Proposal 103 the Governor has power to issue ordinances containing such provisions as it would have been competent under the provisions of the Constitution Act for the Provincial Legislature to enact. It seems to me that it is impossible that the legality of an ordinance might be challenged on the ground that it went beyond the competence of the Provincial Legislature. In that case is it contemplated that an application would be made in an ordinary court or straight to the Federal Court?—(Sir Malcolm Hailey.) It would be judged, though it

was an ordinance, just as an act of the Legislature, and it would be questioned on the ground that it was *ultra vires* of the Legislature itself and that would come before the ordinary Courts.

14,081. But, in the meantime, would it be possible for the ordinary Courts or, above them, the Federal Court, to issue an injunction to the local government or to the Governor to suspend the execution of the orders?—If the ground taken were that it was *ultra vires* of the Provincial Legislature, although it was an ordinance, then it would be possible for the Governor-General to avoid all mischief on that ground by issuing an ordinance of his own which would have the same value as Federal Legislation, and that would be the most immediate way of getting out of the difficulty arising on that score.

14,082. I mean, it seems obvious that if it were possible for a Court to hold up an ordinance for the time being, the very object of the ordinance might be defeated. An ordinance would ordinarily be issued in some kind of emergency?—(Sir Samuel Hoare.) We have met the danger by enabling the Governor-General to intervene if the occasion arose.

14,083. But is the Governor-General's ordinance not similarly liable to challenge in the Federal Court?—You see, Sir Reginald, either the Governor-General or the Governor must be right. The issue would be: Is this power inherent in the power of a Provincial Legislature? If it is not inherent in the power of the Provincial Legislature, it is inherent in the power of the Federal Legislature.

14,084. I suppose under some of the special responsibilities there might be some powers on a borderline?—No, I think this covers the whole field—so my legal advisers tell me.

14,085. I hope that that possibility may be examined?—We will take note of what Sir Reginald says, but I am under the impression that the provisions are quite watertight in this respect.

Lord Eustace Percy.

14,086. Following on this question, I gather the position is that the Governor-General's or the Governor's action at his discretion cannot validate an Act which

would have been *ultra vires* of the Government altogether?—Yes.

14,087. On the other hand, I gather that the intention is that an Act which is within the powers of the Governor cannot be questioned by reason of the fact that it has been done by the Governor or by the Governor-General at his discretion and not by the Legislature?—Yes, that is so.

14,088. I want to make sure about the point which was raised the other day. Is it the intention that the Federal Court should have no power to interpret in any way the Instrument of Instructions of the Governor-General or the Governor?—Yes, that is so. The Instruments of Instructions will be not a part of the Act. They will not be scheduled. They will be referred to in the Act, but they will not be referred to in such a way as to bring them into Court.

14,089. I just wanted to get the intention clear?—Yes.

14,090. There is only one other point, going back to the question of concurrent legislation?—Yes.

14,091. I understand that the Federal Court will have a power in interpreting the constitution to say which of two Acts Federal or State does in fact prevail?—Yes.

14,092. But it is not intended that it should have power in such a case to interpret either the Federal Act or the State Act?—In the concurrent field?

14,093. In the concurrent field?—Yes, that is so.

14,094. Is there a possible distinction? Can you really in many cases decide which of two Acts should prevail without interpreting one or both Acts and are you not in danger by excluding this concurrent field from the Federal Court of getting a good deal of confusion between those two things?—When you use the word "State," you mean a Province?

14,095. I meant a Province; I beg your pardon; I meant a unit?—(Sir Malcolm Hailey.) The danger of course only arises if it is necessary to interpret a law as well as to say which of two laws prevails. I do not think there could be many cases of that kind, but I think it would be possible so to frame the con-

stitution that it should include both issues.

14,096. Should include both issues?—Should include both issues, yes.

14,097. That the Federal Court should have jurisdiction in both?—Where a constitutional question is involved; where it depended on the interpretation of the Constitution Act. If it were necessary for the purposes of that that it should interpret the terms of a law in the concurrent field, it would be possible to arrange for that, but the major premise would be that a question of interpretation of the Constitution Act was at issue.

14,098. May I put it to you that it is not in a small number of cases, but in a very large number of cases, where that is likely to arise, where the whole question will depend on what is the scope of the particular provincial Act. It will probably arise in that form; whether the provincial Act does extend to a supercession of a pre-existing Federal Act?—It is difficult to say that that would be necessarily a question of interpretation. I am afraid I am entering into an argument on the point, but to my mind it is difficult to see that that would necessarily involve a large number of questions of interpretation of provincial and Federal laws, merely in order to decide the question of repugnance.

14,099. I merely raise the point?—(Sir Samuel Hoare.) We will look into it.

Mr. Zafarulla Khon.

14,100. On this, may I make one suggestion to Sir Malcolm Hailey. No doubt difficulties would arise, and that is why the Courts are there to make a pronouncement, but may not one look at it in this way—wherever the question before the Court was which law is applicable to this matter, apart from the interpretation of that law, after it has been determined which law is applicable, and in doing so it has to decide whether a provincial law is applicable or a Federal law is applicable, whatever may be the considerations upon which the decision of the question may depend, that would be a constitutional question, and it would not be necessary to arrange that there may be an appeal. I venture to submit that on the present proposals there would



be an appeal to the Federal Court whatever the decision on that may be. It is only where the question arises: What is the meaning of this particular provincial statute, assuming that it necessarily applies that an appeal on that interpretation would not lie to the Federal Court, but may subsequently, when the Supreme Court is set up, lie to the Supreme Court?—Yes.

14,101. I think that is the distinction?—Yes.

Major Attlee.

14,102. Secretary of State, I would like to ask you again on that question of the exclusion of appeals on concurrent legislation from the Federal Court. I understand that your reason was that you thought there would be a flood of appeals which would overburden the Federal Court?—There were the two reasons which I just gave to Sir Reginald Craddock. The other reason, namely, that the concurrent field is a British India field and for the Federal Court proper we wanted to keep it to deal with the federation as a whole.

14,103. Taking the first point, if there is going to be this flood of appeals, will not you have a similar objection to that which you have already had with regard to the Privy Council being overburdened?—No, I think the effect would be that it would stimulate the Indian Legislature to bring into being the Supreme Court side of the Federal Court. In any case, the position would not be different from what it is now.

14,104. Yes, but the fact that the condition exists does not say that it is right?—If there was this great demand, presumably, then, the Indian Legislature would bring into being the other Bench of the Federal Court.

14,105. If there is this big demand it means that in order to avoid an expense for the Indian Government, you are putting a heavy expense on citizens who wish to take an appeal because they have to take the very expensive course of having to go to the Privy Council?—No, I do not think so; the position would be as it is now. If there is a great demand then the Indian Legislature would bring into being this other Bench of the Court.

14,106. I do not quite gather exactly what you wanted to make that distinction in your second reason, to keep the Federal Court only for Federal laws?—I should have thought the reason was the obvious one, that a Federal Court should deal with Federal questions in which all the units, generally speaking, are equally concerned.

14,107. Did not Lord Zetland make the point that of the present number of those subjects which are classed as Federal, in fact, certain of those subjects only apply to British India?—For the moment, but they are potentially Federal subjects, whereas the subjects in the concurrent field would presumably remain provincial.

14,108. Although potentially Federal, one would gather that there would be a considerable period of years before they would all become Federal?—Yes, that may be so.

14,109. Therefore, if there is a considerable anomaly in having the two bound up together, you are going to put up with that anomaly for a considerable number of years?—If Major Attlee would give his mind to the alternative, the alternative is setting up a Court in which the Federal side may be snowed under by the Supreme Court side. Also the effect of it may be to set up a Court to which, rightly or wrongly, some of the States may look with some suspicion on the ground that it is mainly a British India Court and is not really a Federal Court.

14,110. Has not it appeared from the discussion that you are going to get into considerable difficulties in still retaining one lot of laws which go direct to the Privy Council on constitutional points and another lot that goes, first of all, to the Provincial Court, and then to the Privy Council? Is it not rather anomalous?—I do not think so. I do not think that is the impression left upon me by this discussion. The impression left upon me by this discussion is that it is better to keep the two branches of the Court together, and that it is better not to embark upon the complete scheme until we know whether the Indians themselves want the second part of it.

Lord Snell.

14,111. How and when will it be decided whether the Supreme Court side of the Federal Court is required?—When the Indian Legislature pass a Bill.

Sir Austen Chamberlain.

14,112. Secretary of State, if the proposals in your memorandum are carried out, and for the Supreme Court which was contemplated in the White Paper, there is substituted a branch of the Federal Court: would you consider the name of the Federal Court? Is not Supreme Court a better name than Federal Court, which was only used because you needed two names before?—I would not like to give an answer beyond saying that I will certainly consider a question of that kind. One has to take into account the back history of names of this sort, and hitherto the name of Supreme Court has been very much associated with British India questions, and it may well be that the representatives of the States would prefer to have another name, but I will certainly take the suggestion into account.

14,113. One has in mind the very high reputation attaching to the name in the case of the Supreme Court of the United States?—Certainly.

Mr. Zafrulla Khan.

14,114. Secretary of State, may I, before touching on matters which are referred to in your memorandum, ask you one or two questions with regard to the composition of the Court as set out in Proposals 151 to 153?—Yes.

14,115. The compulsory age of retirement in the case of judges of the Federal Court is suggested in Proposal 151 as 62 years?—Yes.

14,116. Would it not be advisable to raise it, say, to 65, in view of the fact that the kind of judge who is likely to be appointed to the Federal Court will, for various reasons, be appointed at rather an advanced age, and supposing a judge who was for the first time appointed to the Federal Court did not come from the High Courts but was sent out from England at an advanced age, he might not consider it worth while to go out for a small number of

years?—There is nothing sacrosanct about the proposal of 62 years; it is rather in the nature of a compromise. Some people have taken the view that it ought to be 60 and some have taken the view that it ought to be 65. I should like to hear the views of the Indian Delegates upon a point of this kind, and I will take note of what Mr. Zafrulla Khan has said.

Mr. M. R. Jayaker.

14,117. May I mention another reason is support of what Mr. Zafrulla Khan has said. Under Proposal 169 the High Court Judge retires at the age of 62?—Yes.

14,118. And I can imagine cases where such a retired High Court Judge, by reason of his special eminence, may be appointed to the Federal Court. If you have the same age limit, 62 in both cases, you will not have the opportunity of appointing a High Court judge even for three years to serve in the Federal Court?—Yes. I am not saying that it would be wise or unwise, but you could meet that point by reducing the age of the High Court judges.

Mr. Zafrulla Khan.

14,119. The compromise I suggest is that the compulsory age of retirement in the case of High Court judges may be fixed at 60, and in the case of Supreme Court and Federal Court judges at 65?—Yes. I am impressed by the point that has just been made, namely, that there ought to be a difference between the ages in order to enable a High Court Judge to go to the Supreme Court.

Sir Akbar Hydari.] Secretary of State, I had raised this case before, and you will see in the Gwyer-Seluster Memorandum they have contemplated the age of 65.

Sir Phiroze Sethna.] In paragraph 61 of the Third Report of the Federal Structure Committee, the retiring age is suggested at 65?—Yes; I will take note of these views. As I say, there is nothing sacrosanct in our 62 age limit.

Mr. Zafrulla Khan.

14,120. With regard to qualifications as described in Proposal 153, may I draw

your attention to a point which is set out in sub-Proposal (b) at the top of page 77: "has been for at least five years a judge of a State Court in India." Does that mean any State Court? Supposing he was qualified as laid down in the latter part of this paragraph?—It would mean in a State Court corresponding with a High Court.

14,121. So the meaning is a Superior State Court, an Appellate State Court?—That is so, the Highest Court in the State.

14,122. With regard to sub-Proposal (c); it says: "has been for at least five years a judge of any Court, other than a Chartered High Court, and was, at the date of his appointment as such, qualified for appointment as a judge of a Chartered High Court." I presume also here any Court means Commissioners' Courts, which are not Chartered High Courts but are in the position of High Courts?—Yes.

14,123. Coming to Proposal 155, one notices that there is a distinction drawn between sub-Proposal (i) and (ii). With regard to matters involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, the original jurisdiction of the Federal Court is proposed to be limited to cases where the parties to the dispute are the Federation or a unit on each side?—Yes.

14,124. But in regard to the second part matters "arising under any agreement entered into after the commencement of the Constitution Act between the Federation and a Province or a State, or between two Provinces or a Province and a State", the provision would obviously apply to disputes of all kinds, whether they were between the Federation and a unit or units, or whether they were between private parties or a private party on one side and the Federation or a unit on the other?—Sub-paragraph (ii) is meant to be parallel with sub-paragraph (i), and not to raise a new issue of that kind.

14,125. So one understands that the limitation in sub-proposal (ii) would be obligatory; the matter must relate to a matter of that kind and must also arise between the units?—Yes.

14,126. Just the same as in sub-proposal. (i)?—Yes.

14,127. With regard to proposal 156 (and here one begins to enter upon matters which are also referred to in your memorandum), a question arises on the appellate jurisdiction of the Federal Court?—Yes.

14,128. From High Courts other superior Courts in Provinces or States. I will draw your attention to your memorandum on this point. You say in paragraph 1: "On the other hand, it is obviously impossible to allow the Federal Court to be overwhelmed with a mass of appeals based upon the mere suggestion that a constitutional issue is involved; and we, therefore, propose that an appeal should only lie by leave of the Court whose decision it is desired to challenge, or, if that Court refuses leave, by leave of the Federal Court itself, unless the value of the subject-matter in dispute exceeds a specified amount." That is perfectly clear, as far as I have read out?—Yes.

14,129. But then you go on to say: "But we also intend, and the Committee will, no doubt, wish to consider whether express provision should not be included to that effect, that the Federal Court should have power to decline summarily to entertain any appeal, or any application for leave to appeal, where it appears to them vexatious or frivolous, or made only for the purposes of delay; though it would have to be made clear that this power could not be exercised where the Court from which the appeal is brought has already given leave to appeal." I understood the intention was to provide that you must get either the leave of the Court from whose decision you wanted to appeal, or the leave of the Federal Court, and, in any case, as your next paragraph provides in the form of a Case Stated. If the Court grants leave it must state a case for the Federal Court. If the Federal Court grants leave it must direct the High Court to state a case. What class of cases do you intend that this power of summarily refusing an appeal should apply to? Supposing the High Court has granted leave to appeal? You say this power should not apply?—Yes.

14,130. If the Federal Court has granted the leave to appeal, obviously there is no room for this power. The third case is where the value exceeds the limit you propose and the High Court does state a Case that the constitutional question does arise, and states a case to that effect. Then do you contemplate that the Federal Court in that case would say: "No, there is no constitutional issue; it is so frivolous that we shall not entertain it"?—(Sir *Malcolm Hailey*.) All that was contemplated was that in cases where the original Court had not granted a certificate, and leave was asked of the Federal Court, the Federal Court should refuse leave to appeal in cases which were frivolous or vexatious, without calling on the original Court to state a Case. That was the intention.

14,131. It is only a point of drafting as it is now. There is no difference; but I thought once you had brought out that where leave to appeal is refused by the Court whose decision it is desired to appeal against, you may come and seek leave of the Federal Court itself, all those considerations are included in that. The Federal Court may refuse leave either on the ground that the decision of the Lower Court was justified, that there is no important question involved, on the ground that the appeal is frivolous, or on the ground that, although an important point is involved, there are decisions on the point already and their decision is not required?—(Sir *Samuel Hoare*.) It is, as Mr. Zafrulla Khan says, merely a question of getting the drafting right. The intention is as he expresses it.

14,132. I think the additional power is not necessary?—It is only desired to make it clear that there was this power.

Mr. M. R. Jayaker.

14,133. All these matters would go into the rules?—Yes.

Mr. Zafrulla Khan.

14,134. They would not be in the Constitution Act. With regard to the question of appellate jurisdiction, that has been raised as to the interpretation of Federal laws, and some question has been raised also with regard to the interpretation of Federal laws operating in the concurrent field?—Yes.

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14,135. I am merely reinforcing what has been said by the Secretary of State himself and some members of the Committee already, that if one looks at the list on page 119 of the White Paper, and if an appeal were to be allowed to the Federal Court from the very beginning on matters arising in connection with that list, could the Secretary of State's expert advisers tell him subsequently, or could the Secretary of State tell the Committee now, if he is prepared to do so, what scope would there be left for the subsequent setting up of a Supreme Court. What matters would then be left out with which a Supreme Court would have to deal if all these matters could go to the Federal Court?—There is, of course, the provincial list of subjects, List No. II.

14,136. Yes?—But Mr. Zafrulla Khan is quite right in his general conclusion that List No. III covers a very wide field?

14,137. Yes. I do not deny that there would still be some cases that would not be covered, but am I right in saying that their number as compared with the number that arise here will be very small indeed?—I expect Mr. Zafrulla Khan is right. I can only give an answer if I analyse rather carefully Lists II and III.

14,138. I am only suggesting that the great mass of law regulating matters out of which appeals to the Superior Courts arise is really, as to the great mass of it, covered by this List on page 119? I do not say that it is altogether covered?—(Sir *Malcolm Hailey*.) There might be matters arising out of the Taluqdari Act and similar Acts relating to land.

14,139. I am not saying it is all covered, but it is covered to a very large extent?—(Sir *Samuel Hoare*.) Yes; that is so. There is no doubt about it.

14,140. My suggestion is that if these matters came in at the very beginning to the Federal Court, it would amount to a decision. I am not opposing it but those who will assume the responsibility of it must keep it in mind—to establish one Court in the very beginning which would deal with almost all the matters, or to a very large extent, matters which would be dealt with by a Supreme Court if it were set up subsequently?—Yes; I think that is so.

14,141. May I draw the attention of the Secretary of State to paragraph 161 ?  
—Yes.

14,142. The Governor-General is there empowered "in his discretion, to refer to the Federal Court, for hearing and consideration, any justiciable matter which he considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it" ?—Yes.

14,143. Is it contemplated that the hearing of such a matter would be an ordinary judicial hearing, Counsel appearing; and so on, the same as the Privy Council procedure ?—What is in our minds is the analogy of the Privy Council, and I imagine that the same kind of procedure would normally be adopted by the Federal Court.

14,144. Assuming that that were so, then would there be a right of appeal to the Privy Council under paragraph 158 from a decision given by the Federal Court on such reference ?—No ; I do not think so. The Governor-General, I suppose, could always take another opinion if he wished, but there would be no appeal as of right.

*Dr. B. R. Ambedkar.*

14,145. There are no parties to it ; it is only the Governor-General asking for an opinion ?—The opinion is really an advisory opinion.

*Mr. Zafrulla Khan.*

14,146. Pursuing that matter for one moment, I understand—I am not quite sure about it but I will be corrected if I am wrong—that where a matter of that description is referred under the corresponding provision to the Privy Council, although the Privy Council gives in form only an opinion, the matter is necessarily determined to the extent to which it has been remitted to the Privy Council in accordance with the opinion given ?—I do not think you can go to that length. The Governor-General in coming to a decision asks for the advice of the Federal Court.

14,147. I first want to be sure whether that is the case in regard to the Privy Council ?—The case I have in mind with the Privy Council—it is a case that was dealt with during the time that I was

a Member of a Government—was the Irish Boundary Case. In that case, we asked the Privy Council to give us their opinion upon a very difficult issue between Ulster and the rest of Ireland. It was an advisory opinion. The Government acted upon the decision but the Government did not divest itself of its discretion.

14,148. I understand that the Governor-General would ask for advice and an opinion would be given to him, and then, no doubt, having obtained the advice of a Court like that, he would attach the greatest value to it ?—Certainly.

14,149. And he would not depart from it unless he was compelled to do so by very strong considerations ?—I think that would certainly be the position.

14,150. In that case, would it not be advisable—I merely make the suggestion—that the rules should provide that although there may have been a hearing in the judicial manner, the hearing should not be public in the sense that everybody would know what advice had been given, so that subsequently if the Governor-General was not able to see his way to act in accordance with that advice an agitation could not be started because that advice was not taken ?—I think the more latitude is left in matters of that kind, the more use is likely to be made of this procedure, and it is likely to be a very valuable procedure in future.

14,151. It is for that reason that I am suggesting that if the advice were given in a manner which did not gain too great a publicity for the advice, the Governor-General might be encouraged to make such references because it would leave him free after he had gained the advice to come to his own decision although he may attach the greatest value to that advice ?—Yes.

*Mr. M. R. Jayaker.*

14,152. Who would enforce the judgment under paragraph 161. Would it be a judgment under paragraph 160 ?—No, it would not be a judgment. It would be an advisory opinion.

14,153. Would the Governor-General give directions ?—It depends entirely what kind of advice it is and what kind

of action he would take. It is a very wide proviso, covering a number of possible cases, and it is very difficult to give a definite answer as to whether he would take action, and, if so, under what particular power he would take action.

14,154. You do not exclude it from the operation of paragraphs 125 and 126, where it does take the form of a subject in which he can give directions?—No. If it were in that field we certainly would not exclude it.

(After a short adjournment.)

Mr. Zafrulla Khan.

14,155. Secretary of State, may I now call your attention to the method of carrying an appeal to the Federal Court, and one or two other matters that arise in connection with that?—Yes.

14,156. If you will kindly turn to Proposal 118 at page 69, you will see that one kind of ease in which constitutional questions might arise is proposed to be provided for in this manner, that where the validity of a piece of legislation is called in question on the ground that it was not within the competence of the legislation which actually passed it, then the Trial Court before whom such a question is asked will state the question and make a reference with respect to that question to the High Court of the Province or the State?—Yes.

14,157. I presume that in the meantime the suit remains pending and stayed in the Trial Court?—Yes.

14,158. When the High Court has heard the matter and pronounced an opinion, would an appeal (because all these matters are bound to be constitutional issues that we are discussing now) lie from that opinion to the Federal Court, or would the subsequent course be that the High Court sends down its opinion to the Trial Court, which proceeds to pronounce judgment upon the whole matter. There is perhaps an appeal from the Trial Court's judgment on the other matters involved to the High Court and from the final decision of the High Court on appeal to the Federal Court?—I would like to ask my legal advisers about a point of this kind. It would seem to me that the simple way of meeting the position would be for the constitutional issue to be settled straightaway.

Mr. Zafrulla Khan.] I personally, for whatever my opinion may be worth, would agree with you.

Sir Hari Singh Gour.] May I draw your attention to the other aspect of the question? It may be that the issue which has been decided by the High Court may become unnecessary in view of the decision of the subordinate Court upon other issues; and, therefore, if the matter goes up to the Supreme Court, it may not be a matter of *res judicata*, but merely an interlocutory order not necessary for the decision of the case, and, therefore, time would be wasted in going to the Supreme Court and delay caused in the decision of the case which might eventually be upon other issues unconnected with the decision in question.

Mr. Zafrulla Khan.] May I take it upon myself to reply to Sir Hari Singh Gour upon this point? It is this: It may be that the opinion of the High Court, or if an appeal was permitted to the Federal Court, the final opinion of the Federal Court may eventually turn out to be unnecessary for the decision of that particular suit, but, nevertheless, it will continue to be a precedent for that question or similar questions when they arise in any subsequent legislation. The benefit of a precedent will not be one whit the less because it may subsequently be discovered by the Trial Court that that decision was not necessary.

Sir Hari Singh Gour.] No; it would be a decision that would be merely otiose, and not necessary for the decision of that case.

Mr. Zafrulla Khan.

14,159. Supposing it is contemplated that there should be an appeal at that stage, and I personally think that perhaps would be the more convenient course, what would happen in other cases not covered by Proposal 118 in which a question arose regarding the interpretation of the Constitution Act in a Trial Court in an ordinary suit? Would the

Court in those cases be required to state a Case and refer it to the High Court, staying the suit, as in cases arising under Proposal 118, or would it proceed to decide the question itself along with the other questions arising in the case, and let the matter be taken up to the High Court on appeal in the ordinary way?—I think that, subject to what I have said about consulting my experts' opinion again on the subject, my answer would be the same as my former answer to Mr. Zafrulla Khan, namely, that the constitutional issue would be decided at once.

14,160. By reference to the High Court and then an appeal provided to the Federal Court?—Yes.

14,161. That being so, there is a category of cases with regard to which the White Paper says, and your memorandum, also says, that if the value exceeds a certain limit, and a constitutional question is involved, the High Court would be bound to state a case if it were required to do so by any of the parties for the opinion of the Federal Court?—Yes.

14,162. What kind of valuation have you in view? What is the valuation to which you would refer for that purpose; an issue having been sent up by the Trial Court to the High Court, the High Court, having pronounced their opinion upon that issue, what value would you decide upon as to whether the right of appeal to the Federal Court was to be given or not?—I should like to have the views of the British and Indian lawyers upon a point of that kind. We have no sacrosanct figure in mind. The figure in the case of the Privy Council is Rs. 10,000.

14,163. I was not so much on the figure you proposed, whether you proposed Rs. 10,000 or Rs. 20,000. My question was directed to this: What kind of valuation would you have in mind; the valuation which the plaintiff has valued it at in the Trial Court for the purpose of the suit?—That is the valuation. We had in mind the Privy Council analogy; whether it is applicable to this case or not I am not sure, but we were taking the Privy Council as our analogy.

14,164. In the Privy Council there is this distinction, that whatever it is, the

valuation of the suit which governs the course of appeals the Privy Council deal not merely with questions of law and interpretations, but in several cases, also issues of fact, and therefore that valuation has been prescribed and it must be a really substantial suit?—Yes.

14,165. But here you would be dealing with abstract questions of interpretation, and should the course of appeal be determined by the fact that as it happens the particular suit is of no value, although the question that might arise may be of very general and very great importance; and should there be a right of appeal as a matter of course because the suit happens to be of very great value, although the question involved, although being of a constitutional nature, is not of very great importance?—I see Mr. Zafrulla Khan's point. What we were anxious to do was to give the individual a right provided it was a substantial case, and whether the definition of a substantial case should depend upon the money value or not, I think is a question for discussion. We took it as a simple way of testing the substantial character of a case. If there is a better way of testing it, let us by all means have it.

14,166. I have raised this question for the consideration of your advisers?—Yes.

14,167. Because, supposing a question arose whether a certain Federal statute was or was not *ultra vires*, it would be hard if it should be determined by the amount that the plaintiff is willing to pay, because very often it is left to him to value a suit as he chooses, provided he is prepared to pay Court fees up to that amount?—We will certainly consider what Mr. Zafrulla Khan has just brought to our attention.

14,168. I can imagine classes of cases where it would be difficult for the plaintiff even to fix his valuation. They are recognised now by the Suits Valuation Acts, and it is said that the value of the suit shall be the value which the plaintiff himself arbitrarily may fix?—Yes.

Mr. Zafrulla Khan.] Therefore, I think: this question should depend not so much on value as the character of the question raised.

*Mr. M. R. Jayaker.*

14,169. Even on the analogy of the present Privy Council practice, when there is a substantial question of law, it does not matter what the value of the suit is. That itself is a ground for appealing to the Privy Council?—Is it not the case that the special leave of the Court is required?

*Sir Hari Singh Gour.*

14,170. Yes?—Here we are dealing with a class of cases in which the individual has the right without the leave of the Court.

*Mr. M. R. Jayaker.*

14,171. What I was pointing out in support of what Mr. Zafrulla Khan said was that when the case is stated in the form of a law point, invariably it is a case in which a constitutional question of a substantial character is involved. Why should it be affected by the fact that it arises in the course of litigation whose pecuniary character is very small?—Surely those cases are safeguarded. Those cases would not be the cases in which the individual would be appealing?

14,172. Yes, it may be a case in which the individual appeals because it arises in the course of his litigation which he has started?—I see this is a substantial point. We will take it into account. The difficulty is to find some equally good and simple definition of the kind of case that may be taken to the Federal Court.

*Mr. Zafrulla Khan.*

14,173. There is one small point further to which I wish to draw the Secretary of State's attention. Perhaps it would only be a question of drafting in the end. In his memorandum and in the White Paper also, it is assumed that where a constitutional question is raised in a suit which satisfies the valuation test, then either party may require the High Court, as it were, to state a case for the Federal Court on appeal?—Yes.

14,174. Supposing the High Court after it had heard the reference from the Trial Court came to the conclusion that no constitutional question was involved in this matter and remitted the reference to the Trial Court, I think that is a case which ought to be provided for.

Is it a case which raises a constitutional question, or is it a case which does not? The valuation may be satisfied, and yet the High Court may say: "We have decided that no constitutional question arises; we are not bound to refer it." The party might contend that that question is itself a constitutional question. I have raised this case because this kind of question has created difficulty in my Province?—I am obliged for any points of this kind. We must certainly take them into account.

14,175. With regard to one proposal in the Memorandum where you suggest that in the event of your proposal finding acceptance a Supreme Court may subsequently be set up as a division of the Federal Court, the acceptance of that proposal would necessarily lead to this, that a separate Court would have to be set up for hearing criminal appeals of the kind that are provided for in paragraph 166?—Yes.

14,176. I merely want to suggest this to you, that the Supreme Court will not be set up for some time after the introduction of the Constitution, and, in the meantime, the Federal Court will have had time to establish its character, as it were?—Yes.

14,177. But, apart from the fact that naturally if you give larger jurisdiction there would be more work for it to attend to the value of a criminal appeal would be lost altogether if a Court of a somewhat inferior status was to deal with the criminal appeals from the High Courts. Looking at it from the point of view of the High Courts, I think that whereas they might reconcile themselves to their judgments in certain cases being subject to the scrutiny of the Supreme Court, they might resent that in these cases appeals should go from their judgments to an intermediate court, and from the point of view of the litigant I think the value to him of an appeal to the Supreme Court would be larger than the value of an appeal to a sort of intermediate court that might be set up consider appeals of this sort?—I can only say that all the expert opinion that I have consulted here is very much against putting the criminal cases into the Federal Court. They feel that they will really smother the Federal Court with



criminal appeals and the result will be that it will lose its essential character. They also think the result will be a very large Court with a great many judges.

14,178. On the other hand, the number of judges will not be any the less if you have a separate Court to deal with these criminal appeals?—I should have thought—but here I speak with great deference in the presence of a lot of distinguished lawyers—that it is very important to keep the standard of the Federal Court very high, and if you are going to keep it very high, you must not have too big a personnel.

14,179. That being so, do not you think that the opinion in British India might then stiffen in support of the proposal that there should be a separate British Indian Supreme Court which would deal with all kinds of appeals from the High Courts which are to be carried to the Supreme Court rather than that criminal appeals should be relegated to a sort of intermediate or inferior Court?—Lord Reading will correct me if I am wrong. I imagine it would be doing very much what is the actual practice here. I do not think anybody here would say that the Court of Criminal Appeal was an inferior kind of Court because it was not a part of the House of Lords.

14,180. It is inferior to the House of Lords?—Yes. I was using the word "inferior" in a more general way.

14,181. I was not using that expression in that sense at all, not that the Court itself would be inferior but a Court which was inferior to the Supreme Court?—I do not know what the Lord Chancellor and Lord Reading would think about this.

Marquess of Reading.] It would not be so in the Court of Criminal Appeal because the House of Lords would only have jurisdiction in any case which is certified by the Attorney-General as a case which involves a matter of law and general public interest.

The Lord Chancellor.] I think the point Mr. Zafrulla Khan is making is this. He says—I am not saying whether I agree or not—that if you have a Court of Criminal Appeal you do not want to have a Court of Criminal Appeal the judges of which will be held in less

estimation than the judges of the Court from which the appeal is brought. That is got over in England in this way. When we started a Court of Criminal Appeal here, we selected seven out of the fifteen King's Bench Judges to hear the criminal appeals which came from their brethren. It was then found to be rather invidious to pick out seven of the fifteen Judges for the purpose and we passed another Act of Parliament under which all the Judges of the King's Bench form a Court of Criminal Appeal and hear appeals from their brethren. Of course the trouble about the whole thing is this, as Mr. Zafrulla Khan will readily recognise. The population of England is very much smaller than the population of India.

Mr. Zafrulla Khan.] They are much more law-abiding, of course.

The Lord Chancellor.] I think if we had a very large number of criminal appeals in England, it would be quite impossible for the Court of Criminal Appeal, as at present constituted, to do its work. I forget the number, but I think there are less than 1,000 appeals a year.

Marquess of Reading.] And they usually sit one day a week.

Mr. Zafrulla Khan.

14,182. Will it not be better to work rather in the direction of further restricting criminal appeals, if that would afford a solution?—I would not like to give an opinion on a question of that kind without further consultation with my advisers. As I say, the great body of advice that has been given to me has been against bringing criminal cases into the Federal side.

14,183. I appreciate that. On the other hand, what is proposed is to have your ordinary civil appeals which are appealable to a High Court under the rules framed and to go to the Supreme Court division or side of the Federal Court when it is eventually set up?—Yes.

14,184. And criminal appeals, when they are permitted, whatever may be the restrictions, to go to another Court?—Yes.

14,185. Or the Federal Court to be entirely separate from the Supreme Court and British Indian appeals to go to the Supreme Court. This is the choice?—Is not there a third choice, that you might reserve the Supreme Court in British India for civil cases?

14,186. If you have two separate Courts, the Federal Court entirely separate from the Supreme Court, in case the suggestion made by you in your Memorandum does not find acceptance with the Committee or with Parliament afterwards and a separate Supreme Court is subsequently set up, would not that Court then hear civil appeals?—I should not like to give an answer to a question of that kind. I should think my answer would be that it might or might not; it would depend what view was taken of the subject, but I can conceive a Supreme Court which would not have an appeal jurisdiction in criminal cases.

14,187. If the proposals put forward in the White Paper were accepted, and given effect to, would not then the Supreme Court hear both civil and criminal appeals?—Yes.

14,188. Therefore, that is the choice between the White Paper and the Memorandum circulated by you. That is the choice at present?—Yes, but it is true to say that I have had this very strong representation from the expert opinion in recent months against having the two kinds of jurisdiction in the one Court.

Marquess of Reading.

14,189. May I ask you one question, Secretary of State. Perhaps you may have answered it while I was away, but you have been talking, as I understand, of another Court or a division of a Court for the Criminal Cases which would not have the same jurisdiction as the Judges in the Federal Court. That is what I understand you have been saying?—Yes.

14,190. May I ask whether you have considered the wider question of allowing, with the limitations that may be put upon it, and assuming that the extension of the Act is given, the appeal to the Federal Court with the jurisdiction to the Judges of the Federal Court to determine it, leaving it, as it

necessarily must be, for the Head of the Federal Court to determine which of the Judges of the Federal Court should listen to the case? What I am thinking of is this: Is it desirable—I only want to know whether this has been considered—that you should make distinction between the jurisdiction of Judges who will sit in the Federal Court? Is it not preferable that the Judges who will sit there will have all the jurisdiction of a Judge of the Federal Court, although you may divide them into certain chambers for convenience for the purpose of hearing one class of appeal and another?—Yes. I am not quite sure whether Lord Reading is talking only of civil cases or of criminal cases as well.

14,191. It really would apply in the same way to civil, but I thought your views did apply to civil cases. I had rather understood that in the extended Bill that was to be given, assuming that such a law was passed by the Legislature, there would be then an appeal to the Federal Court in civil cases?—Yes, that is so.

14,192. Then I contemplated—I do not know whether I was right—that there would be no distinction drawn between the Judges who would sit to try those cases and the Judges who would sit to try the purely Federal law cases?—That is so: there would be no distinction.

14,193. It is very desirable that there should be none. There never is in our Courts. It may be that a question will arise during the course of a case, it might be on a Federal matter or on a constitutional issue, which might involve a question of civil law. You do not want to have to refer from one branch to another. What I have understood hitherto is that every Judge of the Federal Court will have the jurisdiction which is given to the Federal Court and each Judge will have the same jurisdiction; it is not a question of one having jurisdiction to try constitutional questions and another class of Judge having jurisdiction to try other cases. I should have thought it would be better to have one class of Judge; he is a Judge of the Federal Court; in other words, a Judge of the Supreme Court which is to be consti-

tuted. Whatever cases come up would be tried by Judges of the Federal Court; certain Judges would be allocated for certain purposes, and no doubt they would be interchanged so that they all have the same experience. If that is so, and I understand it is, is it not possible to do the same with criminal cases with the limitations that are to be imposed upon criminal cases? I am only putting this for the purpose of dealing with the points that Mr. Zafrulla Khan has put?—I can only say that there is no side of this problem upon which my expert advisers have expressed a more definite opinion, namely, that to bring criminal cases into the Federal Court will be to swamp it and to alter its character, whatever limitations may be placed upon those cases.

*The Lord Chancellor.*] Mr. Secretary of State, as we are discussing matters here, might I put through you a question to Mr. Zafrulla Khan which is somewhat important on this matter? Do you contemplate that if you have a Court of Criminal Appeal that Court shall have a power to increase sentences? Let me just tell you what the position is. When we started in England the Court had no power to increase a sentence unless there was an appeal against a sentence, but after many years' working of the Court of Criminal Appeal the Scottish people set up theirs and they came to the conclusion that it was better that in all cases where you had an appeal to the Court of Criminal Appeal that there should be power to increase the sentences. The result has been somewhat remarkable; it has rather checked appeals. Have you contemplated which system you prefer in any way?

*Mr. Zafrulla Khan.*] Lord Chancellor, under our present system the High Courts have not only power to enhance sentences; they have also the power on appeal by a local government against an acquittal by a trial court to substitute a conviction therefor. So that that is provided for, and I do not know that it has checked the number of appeals.

*The Lord Chancellor.*] You would want, then, that the Court of Criminal Appeal should have power to increase sentences in all appeals?

*Mr. Zafrulla Khan.*

14,194. No. I think it should be a power which is necessarily for the due prosecution of the law, and wherever it is exercised is necessary. With regard to the Provincial Courts, I have only one or two matters to draw your attention to, Secretary of State. With regard to Proposal 169, on page 80, I have already made the suggestion that the retiring age should be 60 and in the case of the Federal Courts 65. I have no doubt your advisers will consider that?—Yes.

14,195. Proposal 172: I have a recollection that you explained in connection with this Proposal at some stage that, although in the Second Round Table Conference it was suggested that additional Judges should cease to be a feature of the High Courts in India, the Government of India had said that there were distinct advantages in retaining these Judges. The objection from the Indian point of view is this, that under this provision you have Judges, as it were, on trial, and instances have occurred where a Judge has gone on acting as an additional Judge for five, six, seven, and eight years before he is confirmed as a High Court Judge, with the possibility in between that whenever the term of his appointment expired he might be told that he was not going to be appointed, and from the point of view of the independence of the judiciary that was not a desirable state of affairs to have. Could you perhaps without any inconvenience disclose the reasons which have prevailed with you to suggest that this system should continue?—Yes, I certainly will give Mr. Zafrulla Khan an answer. I was assuming that we were not dealing with Provincial High Courts to-day.

14,196. Then I shall not press the question?—But Sir Malcolm could in a sentence just deal with the question. (Sir Malcolm Hailey.) The question really is purely one of expense. The difficulty to which Mr. Zafrulla Khan alludes certainly exists, but the alternative would be to have a permanent staff of Judges strong enough to provide a reserve, because you frequently find that a Court gets depleted by leave and the like in a way that it would not do in England.

Therefore, the device of having temporary or additional Judges has been resorted to simply to save the expense of creating a permanent Court so strong that it contains a reserve.

14,197. Sir Malcolm has combined the two, temporary and temporary additional. I can quite realise that when a Judge goes on leave for six months, during that period of six months you may be under the necessity of appointing an acting or deputy Judge, but what I was alluding to was this regular system of having attached to each Court a number of Judges almost permanently as it were, and yet who, if they happen to displease those in whose hands lies their confirmation, may not be appointed?—The case for additional Judges, of course, is somewhat different from that of temporary Judges who fill a vacancy due to leave. The reason for having additional Judges lies in the necessity for appointing officers to catch up arrears of disposals in the High Courts. Of late years the disposition, of course, has been to bring on to the permanent staff the additional Judges who are found to be indispensable.

Lord Rankeillour.

14,198. On a point of order, my Lord Chairman, are not we dealing with another section on another day to discuss these High Court matters?—(Sir Samuel Hoare.) I hope very much we shall not get into any detail with them. I was assuming that to-day we were only dealing with the Federal Supreme Court.

Mr. Zafrulla Khan.

14,199. Then I will not press the matter. There is only one further question, in case it is permitted; with regard to paragraph 175, and I want you to say whether I am right in assuming that paragraph 175 means only this, that it is proposed to clear up in the new Constitution Act that the power of superintendence at present given to the High Courts under Section 107 of the Government of India Act has no judicial aspect whatsoever and to define it more clearly in the Constitution Act?—Yes, that is so.

14,200. If that is so, then may I assume that there is no intention to

confer upon the Federal Legislature any particular power under this proposal?—No, there is no such intention.

Marquess of Reading.

14,201. Secretary of State, may I ask you one question with reference particularly to paragraphs 158 and 167. I only want to draw your attention to the fact and see that we understand what it is that is proposed. I am drawing attention to it because of your Memorandum which somewhat changes than what is appearing in paragraphs 163 to 167. As I understand from what you have said to us, on any question of appeal to the Federal Court on constitutional issues or on the interpretation of Federal laws, there would be a right of appeal to the Privy Council, subject always as it appears, to the grant of special leave and so forth. I am referring to paragraph 158. It begins: "An appeal will lie without leave to the King in Council from a decision of the Federal Court in any matter involving the interpretation of the Constitution Act," and for the purpose of your Memorandum one understands and of the Federal laws?—Yes.

14,202. Under paragraph 167, where you are dealing with the establishment of a Supreme Court and, of course, it would only apply if there is the extension which we are discussing at the moment, the second sentence is: "An appeal from the Supreme Court to His Majesty in Council will be allowed in civil cases only by leave of the Supreme Court or by special leave." If you are constituting your Federal Court, and if there is the extension to which reference has been made, you would have to make clear, would not you, the distinction which you draw in your Bill between the right of appeal from the Federal Court in civil cases or the right of appeal on constitutional issues, or on the interpretation of a Federal law?—Yes, certainly; we should have to make it clear.

14,203. As I understand, you mean to continue as it is here; that is, the right of appeal without leave on the constitutional and Federal laws questions, but the right of appeal with leave to the Court on civil issues?—I think that is so.

*Archbishop of Canterbury.*

14,204. On the same paragraph, Mr. Secretary of State, if I am not interfering with other questions, and I apologise for not being here this morning, supposing this alteration were made and you had a Federal Court with its two branches: the last sentence is: "In criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise." Has that been discussed this morning?—Yes, at very great length, your Grace.

*Archbishop of Canterbury.]* Then I will not ask you any questions upon it.

*Sir Akbar Hydari.*

14,205. I take it that when in proposal 151 in the second sub-paragraph you say, "appointed by His Majesty", it means His Majesty on the advice of the Ministers in the United Kingdom?—Yes, that is so.

14,206. Then, Mr. Secretary of State, you remember I had asked you a question about the constitution of the Federal Court in Proposal 153, so as to permit judges of the State Courts to be eligible, and you said you would kindly consider it?—Yes, certainly.

14,207. I want to put it to you whether it would be possible for you to accept in paragraph 153 (a) the words "or of the High Court of a State"?—I think we certainly ought to look sympathetically into a suggestion of that kind.

14,208. Thank you. Then also in Sub-paragraph (c) you might have said, "has been for at least fifteen years an Advocate or Pleader of any Provincial or State High Court or any two or more of such High Courts in succession"?—I think we certainly ought to look into that.

14,209. Thank you. Then with regard to paragraph 155 (i) and paragraph 158 there may be agreements of other documents which are not actually part of the Constitution Act itself but are to have the same force and effect as the provisions of the Constitution Act. Would they be treated in the same category under 155 (i) or not?—What exactly has Sir Akbar Hydari in mind? Does he have in mind, for instance, the Instrument of Accession?

14,210. You have said that they would come in?—Yes, they would come in.

14,211. But there might be some other agreements subsequently entered into which have Constitutional validity and about which it is declared that they have some force?—You mean if there were further Treaties of the same kind as the Instruments of Accession?

14,212. Yes?—Yes, they would come in.

14,213. Then only one more question with reference to your Memorandum. I have not had time really to consider adequately the proposals of the Secretary of State for enlarging the jurisdiction of the Federal Court and for providing for the establishment of a Supreme Court of Civil Appeal for British India as a Divisional Court, but my present impression is that the State might feel some hesitation in regard to these proposals, and especially after what we have heard about the possible addition of the Bench of Criminal Appeals to the same Court. One example of the hesitation that I have in the proposal to give the Federal Court jurisdiction to hear appeals arising under Federal legislation as distinguished from the Constitution Act. I appreciate the advantage of uniformity in the interpretation of Federal legislation, but it occurs to me to ask whether the Secretary of State has considered whether his object would be met by a provision that any point of interpretation of Federal law arising in the course of a case before a State High Court should be taken for decision to the Federal Court and the case then remitted to the State Court for judgment on the merits?—I have not had time to consider the suggestion in detail. Upon the face of it, it appears to me to be a suggestion that is deserving of careful consideration. Sir Akbar accepts what I think we all accept, the need for uniformity in the field of the Federal legislation. Let me give a single case in the great body of cases connected with company law and so on. He also appreciates the fact that the Federal Court is just as much a Court of the States as it is of British India. I will certainly look into his suggestion, and, as I say, it appears to

me to be deserving of very careful consideration.

*Archbishop of Canterbury.*

14,214. On that point, Secretary of State, you will remember that the Chamber of Princes was rather anxious to meet the point of appeals from the State Courts on Federal laws; it might be possible to make some special arrangement or devise some machinery to deal with these particular cases? They rather pressed that point?—I do not know about each particular case, your Grace, but I think anyhow I have said enough to show that we will look very carefully into this suggestion.

*Sir Manubhai N. Mehta.*

14,215. Secretary of State, I take it that your new Memorandum has enlarged the sphere of the jurisdiction of the Federal Court, and I also take it that it will necessitate a revision of the language of Section 156?—Yes, that is so.

14,216. The words are: "any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder". "Thereunder" would mean "Constitution Act". You now mean under any Federal law?—Yes.

14,217. Rights or obligations arising under any Federal law?—Yes, List I, Federal Laws.

14,218. So that "arising thereunder" will have to be changed?—Yes.

14,219. In this connection I would refer to the previous Reports of the Federal Structure Committee and also the Proceedings, in order to show what the attitude of the Princes was; it was a very favourable attitude towards this extension. Dealing with the Proceedings of the 22nd October 1931, Sir Mirza Ismail was deputed by all the States to put forward on behalf of the States what the States' attitude would be as regards the Federal Court, and this was the reply given by Sir Mirza Ismail to the Questionnaire. The question was: "Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts, namely, in any matter involving the interpretation of the constitution? Please mark the question

was as regards the enlargement of the jurisdiction. The reply given by Sir Mirza Ismail was: "The Federal Court should have exclusive appellate jurisdiction from both the State and Provincial High Courts only in cases in which a point of federal law is involved or in which any issue arises under the constitution." He departs from the word "Constitution" and uses the term "federal law". He makes it sufficiently wide?—Yes.

*Sir Manubhai N. Mehta.*] After that the Maharaja of Bikaner on the same day proposed this limitation, and the reply given by Sir Mirza Ismail is: "The Federal Court should have exclusive appellate jurisdiction from both the State and Provincial High Courts only in cases in which a point of federal law is involved or in which any issue arises under the constitution." "The words I am asked to suggest" (this is supplementary) "should be added are words which I think the Delegation had intended, but there has been a slip. They are these words:—except in matters which, though federal, are administered by the States themselves." What his Highness meant was that in the case of subjects where administration was reserved by the States the States may not like that the final appellate jurisdiction may lie with the Federal Court, but their own judges may be vested with the final powers. May I also take it that the Federal Structure Committee's First and Third Reports also went to the extent of limiting it to any issue arising from the Constitution Act. Now you have enlarged it so as to include any issue arising out of any Federal law.

*Marquess of Reading.*

14,220. Arising under the interpretation of any Federal law?—Arising out of the interpretation of any Federal law.

*Sir Manubhai N. Mehta.*

14,221. That relief will be open even to the subject of an Indian State?—Yes. I think Sir Manubhai will find, if he goes into the kind of cases an illustration of which I gave just now of company law, that some extension of this kind is very necessary.

*Sir Manubhai N. Mehta.*] I do not deny it.

Sir Akbar Hydari.] It is just possible that that particular head might have practically the same position as the position of a head in the concurrent field vis-a-vis the Province and the Local Government.

Sir Manubhai N. Mehta.

14,222. That is another question. That is why this morning I raised the question as regards original jurisdiction which would be confined to a dispute between one unit and another unit, a State and a Province or a State and a State, but in the case of the appellate jurisdiction the case may be started by a private citizen; he will first exhaust his remedy in the State Court, and if he has a grievance and wants to go to the Federal Court of Appeal he will have his case stated, and the State Court will send it up for reference to the Federal Court for its opinion, and when that opinion is received it will decide according to that opinion?—Yes.

14,223. So that it will be a decision still of the State Court in accordance with the opinion of the Federal Court?—The State Court will be carrying out the decision of the Federal Court.

14,224. For this purpose the Lord Chancellor has promised to the States some formula empowering the Privy Council and the future Federal Court to exercise its discretion on behalf of the States. May I inquire when such formula will be supplied to us?—I do not recall the actual incident, but I will look it up and let Sir Manubhai Mehta know.

14,225. In fact that was what Sir Mirza Ismail referred to?—I will look it up and find what action was taken, and communicate with Sir Manubhai.

14,226. These were his words: "The States naturally attach great importance to the principle that the creation of the Federal Court should not affect their sovereignty in any degree. It will be necessary, therefore, to make it clear that the Federal Court derives its jurisdiction, not from the Crown alone, but from the Federating States as well"?—Yes, certainly.

Dr. Shafa'at Ahmad Khan.

14,227. Sir Samuel Hoare, what is exactly meant by a State Court? Do

you recognise the court of any State?—I did deal with that point incidentally this morning in connection with the smaller States, and it would want a definition, exactly of what was meant by the State Courts. We do not mean a very small Court in a very small State.

14,228. Will the Federal Court be given any power of recognising any State Court or will it be obliged to recognise the Court of every State that federates?—I think we should have to make a definition in the Act.

14,229. I think so. I think it is absolutely essential, if I may say so?—Yes.

Sir Manubhai N. Mehta.

14,230. Then one further point arising out of the Report of Sir Claude Schuster and Sir Maurice Gwyer; it is this practical difficulty: Supposing two States, two subjects, are involved in litigation. One State has accepted a particular subject to be a Federal subject and has entered it as such in its Instrument of Accession; the other State has not entered that subject in its Instrument of Accession. I take the subject of insolvency: there are two contiguous States and one State has accepted insolvency as a Federal subject and the other State has not. Sir Claude Schuster thought that in such a case the Federal Court cannot have jurisdiction; it can have jurisdiction only in cases where both the Courts have accepted the subject as a Federal subject?—That is so.

14,231. So that will have to be remedied also?—Yes.

14,232. It is not mentioned in your memorandum?—We think it is covered. My memorandum is not in substitution for all these various provisions. It is rather in further comment on them, and I think that point is covered in proposal 155. Anyhow, I agree it ought to be covered.

14,233. Then I come to the methods of execution. There, the two proposals, 160 and 162, will also be modified by your present memorandum, because proposal 160 begins: "The process of the Federal Court will run throughout the Federation," and in your memorandum you point out the difficulty?—Sir Manubhai, the memorandum really explains what we contemplate will happen under Proposal 160.

14,234. So the language of Proposal 160 will have to undergo a change?—We will certainly look into it, but the memorandum is meant to be a comment on what will happen under Proposal 160. Quite obviously, in the further drafting we should have to make our intentions quite clear.

14,235. What I wanted to know was that any execution which the Federal Court orders will have to be carried out through the proper agency and not by itself?—Yes, we accept that. That is the basis of our proposal.

14,236. The language was: "The process of the Federal Court will run throughout the Federation"?—If it is necessary to amend the wording we shall have to amend it.

Mr. Y. *Thombare*.

14,237. There is one matter about which I have a question. A question has been raised about the High Courts of small States?—Yes.

14,238. About that the Butler Committee made a distinction between States which find it difficult on account of their limited resources, to perform properly the functions of Government and the States which do not find any such difficulty?—Yes.

14,239-40. Do I understand that this distinction will be borne in mind?—Yes, certainly.

Sir *Abdur Rahim*.] On Proposal 161, I want to be quite clear as to what is meant. A justiciable matter, I take it, means any matter which is capable of being adjudicated upon by the Courts. That, I take it, is the meaning of "justiciable matter." The Governor-General is empowered to make a reference to the Federal Court and obtain its opinion on any such matter.

14,241. For his own use?—Yes.

14,242. That is not a matter which he is bound to publish, but it will be entirely for his own use. He may act upon it, or he may not?—Yes.

14,243. Although, I take it, in most cases he will act upon it. I think you have made that quite clear?—Yes.

14,244. But what I want to be clear about is this: whatever opinion the Governor-General may have obtained

from the Federal Court that will not in any way interfere with the rights of any parties aggrieved in any matter to take it to the Court and obtain its decision?—The Federal Court could not be bound. This is only asking for an opinion. Quite obviously, it could not stop a case.

14,245. Exactly. The party can take a matter to the Court and obtain its decision?—Yes.

14,246. Whatever may be the opinion which the Governor-General has obtained, and whether he acts upon it or not?—Yes, certainly. I am assuming that the Court has jurisdiction for that purpose. If the Court has jurisdiction for the purpose, certainly, yes.

14,247. If it is a justiciable matter?—Within the jurisdiction of the Court.

14,248. It will be within the jurisdiction of the Court?—No; I said, if it is a justiciable matter within the jurisdiction of the Court.

14,249. Would not all justiciable matters be within the jurisdiction of the Court?—No; only those matters would be within the jurisdiction of the Court that are within the jurisdiction of the Federal Court.

14,250. Of course, within the jurisdiction of the Federal Court?—Yes.

14,251. It will be within the jurisdiction of some Court or other, but this will not apply if it is not within the jurisdiction of the Federal Court?—I do not want there to be any misunderstanding between Sir *Abdur Rahim* and me on this point. If the issue is within the jurisdiction of the Federal Court, then anybody may take a case to the Federal Court to get a decision, quite apart from the fact of whether the Governor-General has asked for its advisory opinion or has not.

14,252. Quite?—If, on the other hand, the case is not within the jurisdiction of the Federal Court (say, for instance, it is within the domain of paramountcy, or a dispute outside the Federal sphere), then of course nobody could take it to the Federal Court because the Federal Court would not have jurisdiction.

14,253. That I quite understand. Then another matter about "link" link you were "link" at is as



regards the Instrument of Instructions to the Governor-General not being subject to interpretation by the Court?—Yes.

14,254. I quite understand that, but, I take it, the Instrument of Instructions, as I think you made clear on previous occasions, will deal only with the manner in which the Governor-General is to exercise his special powers and his special responsibilities. It does not in any way affect the law or override the provisions of the Constitution Act?—No, the Instrument of Instructions confers no power whatever on the Governor-General or the Governor. It merely instructs him as to the relations between his Ministers, and so on, but it confers no new powers upon him.

14,255. Therefore, any interpretation by the Courts of any Federal law or any constitutional issue would not be affected in any way by the Instrument of Instructions?—No; it would not.

*Sir Hari Singh Gour.*

14,256. Secretary of State, as regards your memorandum, I understand that it modifies, as you have said, the provisions of the White Paper, dealing with the Federal Court and the Supreme Court by amalgamating the two Courts as far as possible in a single Court and conferring upon this Court the dual jurisdiction conferred in the White Paper on the Federal Court, and partially on the Supreme Court?—Yes.

14,257. The difficulty that I experienced is this: While this will undoubtedly make for economy, because the personnel of the Federal Court, who will not be engaged in dealing with questions germane to that Court, would be available for the disposal of matters coming up before the Supreme Court, the difficulty, I feel is this, that you have, if I may be permitted to say so, truncated the Supreme Court by taking away from it all jurisdiction in criminal cases, provided by Proposal 166, subparagraph two?—Yes, we do propose to keep the criminal cases separate.

14,258. But if you had left the proposals of the White Paper as they are, that would have given the Federal Legislature an opportunity of enacting a measure creating a Supreme Court

both for the disposal of civil and criminal appeals, and that power the Federal Legislature has now been deprived of, because the Federal Legislature can only now create a Court of Criminal Appeal and not a Supreme Court dealing both with Civil and Criminal cases?—No; that is not our intention. Our intention is to give power to the Indian Legislature to create both a Supreme Court and a Court of Criminal Appeal.

14,259. And that Supreme Court would then be such a Supreme Court as is described in paragraphs 163 to 167?—No. Keeping the Criminal cases separate; but we have no wish to put any obstacle in the way of the Indian Legislature having a Court of Criminal Appeal if they so wish it.

*Sir Abdur Rahim.*

14,260. Then there will be a third Court?—Yes.

*Sir Hari Singh Gour.*

14,261. That will be a third Court?—Yes.

*Mr. M. R. Jayaker.*

14,262. You say that in your memorandum, do you not?—Yes.

*Sir Hari Singh Gour.*

14,263. In the constitutions of Canada, South Africa, and Australia, the Supreme Courts, so far as I understand, are more or less on the lines adopted in your paragraphs 163 to 167, that is to say, they are Supreme Courts both in regard to Civil and Criminal matters?—Yes; the reason we have excluded the Criminal cases is the reason I have given earlier in the day, namely, that in India there are so many of them that it would swamp the Court and alter its character as a result.

14,264. But there is a strong feeling in India that there should be an appeal in Criminal cases?—There would be, but it would be to a Court of Criminal Appeal.

14,265. Would you pay the judges of the Court of Criminal Appeal differently from the judges of the Federal Court?—I had not thought about that.

14,266. If their salary is the same, the expense would be greater, because the Court of Criminal Appeal will have separate offices, an English and a vernacular office, whereas if they were judges of the Federal and Supreme Courts, the offices would be the same?—I would, of course, take what Sir Hari Singh Gour says as a fact in a matter of this kind, but I still say that my advisers are strongly against bringing the Criminal cases into the Civil Court.

14,267. On the two grounds you have stated?—Yes.

*Sir Abdur Rahim.*

14,268. But in the High Court and the Privy Council there is no distinction made. The High Court hear both Civil and Criminal matters?—Of course, here there is a separate court of Criminal Appeal.

14,269. But it is constituted out of the judges of the High Court, the same judges?—We could consider that possibility in India.

*Sir Abdur Rahim.*] There is no need for a third separate Court.

*Sir Hari Singh Gour.*

14,270. The difficulty would arise in this case; if you constitute a Court of Criminal Appeal out of the judges of the High Court, you will have to add to the judges of the High Court, because the appeals that would come from the High Court to the Court of Criminal Appeal would necessarily entail the addition of judges?—Yes; that would be so.

14,271. As regards the qualifications of the judges of the Federal Court, I find that these qualifications are different from what obtain at present, for example, as regards appointment to the Privy Council. I have never come across a case, and Sir Malcolm will correct me if I wrong, where any Civilian judge from India has been appointed to the judicial Committee of the Privy Council?—Not within recent memory, certainly.

14,272. Not that I am aware of, and the practice of the Privy Council has always been to follow the procedure of appointing judges from the Bar, a prac-

tice which has been adopted by the Dominions?—Yes.

14,273. Then why should there be a departure if you really want that the Federal Court and the Supreme Court should command the popular confidence and respect which they ought—they should follow the precedent of England and of the Dominions, and that judges should be drawn exclusively from the Bar in the sense that barristers who are also judges of the High Court would be eligible?—I think in an Act of Parliament it is very difficult to discriminate against one kind of judge, although in actual practice the judges of the High Court may normally be taken from the class of barristers, and so on.

*Sir Hari Singh Gour.*] But that has been done, Secretary of State, in the case of the Colonies and in the case of your own country. As a matter of fact, the whole history of your country is a history of professional men being appointed to discharge a highly technical duty of deciding cases.

*Marquess of Reading.*] Is not Sir Hari's point met by paragraph 153, subparagraph (d), a barrister of at least 15 years' standing?

*Sir Hari Singh Gour.*] A barrister is eligible, but many other people are eligible too.

*Mr. N. M. Joshi.*] Why not?

*Sir Hari Singh Gour.*] He has been put in the same category as judges of the High Court and Judges of the State Court, and so on, whereas my submission was that judges of the English Court are exclusively drawn from the Bar, judges of the Dominion Courts are exclusively drawn from the Bar, judges of the Privy Council are also exclusively drawn from the Bar, and the same practice should be followed here.

*Marquess of Reading.*] They may be from judges of the High Court. It is not necessarily a practising barrister. If a practising barrister becomes a member of the High Court, then he may either go to the Court of Appeal or to the High Court, and from there is made a judicial member of the House of Lords, and in that case he sits also in the Privy Council, but he is not promoted directly from the

Bar. It is because he has distinguished himself as a judge.

Sir *Hari Singh Gour*.] That is the case I was referring to. I was asking the Secretary of State, and no doubt Lord Reading will be able to enlighten me, has there been a single case of a Civilian judge of the High Court ever being appointed to the Privy Council?

Marquess of Reading.] I do not recall one, but that is only a recent thing.

Sir *Hari Singh Gour*.] There never has been a case as far as I am aware, and the reason is that the Privy Council follows the practice of the English Courts, and the English Courts follow the universal practice of appointing their judges from the Bar.

Archbishop of *Canterbury*.] Do I take Sir *Hari Singh Gour*'s point to be that among the judges of other Courts who are here qualified to be judges of the Federal Court, there may be many who are not members of the legal profession?

Sir *Hari Singh Gour*.] Yes.

Archbishop of *Canterbury*.

14,274. Then I should like to ask you that, Secretary of State, whether in the case of the Federal Court those reasons which were urged in favour of not restricting even the Judge of a High Court, or a Chief Justice, to Members of the Bar—administrative reasons which were fully explained because administration and law are so much combined in the Provinces—whether these considerations would apply in the case of Judges selected for the particular class of business which the Federal Courts would have to transact, and in that case whether it would not be really much better to restrict it for the Federal Court, with its quite exceptional function in the interpretation of the law and its final decision, to those who from the first have had an equal training?—I think in actual practice that is the way it would work, but I do feel considerable hesitation in agreeing to a proposition in the Constitution Act that differentiates between one High Court Judge and another. I think, in actual practice, this small number of very distinguished Judges will be recruited from the Bar, but as long as judicial officials are eligible for High Court Judges, I think

it is very difficult to discriminate between them and the other people who are qualified for appointment to the Federal Court.

14,275. But the reasons which make it right for men to be selected as Judges for the High Court without being at the Bar or without having had a little training do not apply for the purposes of the Federal Court. It may or may not be desirable not to discriminate between those who have been made Judges, but the reasons why certain men have been made Judges in the High Courts do not obtain in regard to Federal Courts?—I would not like to go so far as to say that.

Marquess of Reading.

14,276. He must have been a Judge for at least five years in order to be eligible under your scheme?—Yes.

Sir *Abdur Rahim*.

14,277. There is another way of meeting the situation, and that would be through the Instrument of Instructions. The Governor-General would advise, I take it, and make a selection?—(Sir *Malcolm Hailey*.) No, the Crown.

14,278. I know, but it is upon the advice of the Governor-General?—(Sir *Samuel Hoare*.) As I say, I see great difficulty in discriminating between one individual, who has been a High Court Judge for such and such a number of years, and another.

Marquess of Salisbury.

14,279. Does it make no difference in the view of the Secretary of State when he finds that Indian lawyers themselves desire this discrimination to be made?—Naturally I pay attention to views expressed from every quarter in this room, but I did make a strong argument the other day for retaining the judicial service as a part of the Indian Judiciary, and, holding that view, I find some difficulty now in making a legal and constitutional discrimination against a particular part of the Indian Judiciary.

Sir *Akbar Hydari*.] I should certainly deplore any exclusion from the Federal Court of a Judge like the late Sir Raymond West. He was a very distinguished civilian Judge of the Bombay High Court, one who is noted for his great ability.

Sir *Hari Singh Gour.*] But he never sat in the Privy Council.

Sir *Akbar Hydari.*] No. I say if you confine your selection to only the barrister Judges of the High Court, then you would exclude men of such eminence from the Federal Court.

Marquess of *Reading.*

14,280. Is not the whole object of your qualification of five years as a Judge to give you an opportunity of seeing how he has comported himself as a Judge and how he has discharged his duty whether as a civilian or as a barrister?—Certainly.

Mr. *M. R. Jayaker.*

14,281. May I just point out to the Secretary of State this as regards his point that it would be invidious to make distinction between one High Court Judge and another? He may correct me if my impression is wrong, but is not the present rule this, that out of all High Court Judges, only a barrister High Court Judge can rise to be made Chief Judge of the High Court?—Yes.

14,282. That discrimination is made under present law?—(Sir *Malcolm Hailey.*) It is not proposed under the White Paper.

Mr. *M. R. Jayaker.*] I am coming to that, but there is distinction made at the present moment by Acts of Parliament between one High Court Judge and another High Court Judge.

Sir *Hari Singh Gour.*

14,283. And that discrimination was sought to be set aside, I think, when Lord Peel was Secretary of State, and the whole of India rose up in arms against that Bill which had to be dropped in the House of Commons. The Secretary of State may verify these facts by referring to the fate of that Bill, which was introduced into the House of Commons and had to be dropped like a hot potato in consequence of the overwhelming opposition from all parts of India?—(Sir *Samuel Hoare.*) Then all I would say is that if you want to do away with that discrimination in one direction, you ought to do away with it in all directions.

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14,284. We are not doing away with discrimination at all. For 150 years, that post has been held by barristers. The Judicial Committee, at the present moment, are the final arbiters in matters of Constitutional law and procedure. They are manned exclusively by members of the Bar. Only recently, during the viceroyalty of Lord Reading, two Indian Judges were added to the Privy Council, and they are both Members of the Bar, and it was so provided. The point I am making is that in the law and history of British Rule in India, and for the matter of that of British connections in the Dominions overseas, there has never been a case of a civilian being appointed to the Supreme Court, either of the Dominions or of the Privy Council, and we are making now, for the first time, a departure in introducing civilian Judges into the final Court of Appeal in India?—No. Sir *Hari Singh Gour.*—I say this with great deference as he is a great lawyer and I am not—is really quite wrong. There is no statutory limitation at all upon anybody being appointed to the Privy Council. Anybody could be appointed to the Privy Council whether he had been a barrister or whether he had not been a barrister. The actual practice has been that barristers have invariably been appointed. That may very well be so in the case of the Federal Court.

Marquess of *Reading.*

14,285. Do you mean the Judicial Committee of the Privy Council?—I mean the Judicial Committee. Is there any statutory provision? I am informed there is not.

14,286. I will not undertake to say. I do not think it has ever been raised. I rather think there is, but I will look at it, but there never has been a case?—We are not disagreeing about this. I am not saying there has never been a case but I understand there is no statutory limitation.

14,287. I rather think there is?—I will look it up, but my advisers here tell me there is not. (Sir *Malcolm Hailey.*) The Judicial Committee Act, which lays down that certain persons shall be formed a Committee to be styled the Judicial Committee of the Privy Council, specifies

certain persons, including the Keeper of the Great Seal, and adds at the end "Two other Privy Counsellors appointed by His Majesty." I have no doubt as a matter of convention they are generally persons of the legal profession.

Marquess of Salisbury.

14,288. If the Secretary of State were to say to us that in point of practice there never will be a man appointed to the Federal Court who has not got a training as a lawyer, it does not matter very much whether it is laid down in the Constitution Act or not if it is absolutely certain. In the same way I believe still—certainly up to a short time ago—every Peer had a right to sit as a Member of the House of Lords Court of Appeal, but, in point of fact, of course, no Peer who has not had a high legal training does sit. That is very often the practice in England, that a thing is done even though it is not absolutely legally prescribed. If that is what the Secretary of State means, I should not wish to press him, but I must say that I do think when we are laying down a Constitution of a most elaborate and most difficult kind, in which the finest distinctions of Constitutional law have to be made, and that is to be interpreted as meaning gentlemen who have no training in the law at all—?—Lord Salisbury is surely overstating the case. This is not a question of people who have no training in the law at all. This is a question of a High Court Judge for five years.

14,289. He might have been Chairman of Quarter Sessions for five years, as it were ?—Judge of a High Court for five years. I do not know what Lord Reading would say about that. I should have said that that was very considerable legal training.

Sir Austen Chamberlain.

14,290. He need not have been Chief Justice of the High Court, but a Member of the High Court ?—Yes.

Archbishop of Canterbury.

14,291. Having regard to the quotation from the Act, governing the constitution of the Judicial Committee, I take it you say that that is a valuable example of the importance of conven-

tions in this country as apart from statutory provisions ?—That is so.

Lord Peel.

14,292. I hope you will not take it that every Member of this Committee objects to a non-barrister being made a Member of the Federal Court. I think it is high time that such posts were not confined to the legal profession ?—I do not like the idea of drawing a distinction between the qualifications of one kind of Judge and another when they have both the same kind of service in the same Court.

Sir Hari Singh Gour.

14,293. There is one last question I should like to ask. According to the scheme of the White Paper and of the Memorandum there will be first a Federal Court and then a Supreme Court ?—Yes.

14,294. It may take some time before the Federal Court is established ?—Before the Supreme side of the Federal Court is established; it may or may not.

14,295. In the meantime are you giving the Indian Legislature any power to establish a Court ? Some of the functions of the Supreme Court for the disposal of cases, for example the judicial control of the Income Tax law, for which a Bill is now pending in the Indian Legislature ?—I am not fully conversant with the provisions of the Bill. What does it do ?

14,296. It provides for an independent tribunal to dispose of certain cases, and the Government have accepted the principle of the Bill to that extent, the Bill has gone to a Select Committee, and it is proposed to appoint two Judges having an All India jurisdiction, the intention being that these two Judges will in course of time become part of the Supreme Court. That is the intention ?—There is not anything in the provisions to stop a proposal of that kind going on.

14,297. My suggestion was that if you gave the Indian Legislature the power immediately to establish a Supreme Court independently of the Federal Court, that would give the Indian Legislature power to establish a Supreme Court for that purpose ?—I should not

like offhand to give an answer to a question of that kind, because I am not quite clear in my own mind as to how these Income Tax appeals would fit in with the other appeals, but if Sir Hari Singh Gour would like to have a talk with the experts at the India Office at any time and he will let me know, we could go into this question with him.

Sir Hari Singh Gour.] Thank you.

Sir Phiroze Sethna.

14,298. On a point of order, my Lord Chairman, I know we are discussing the Federal Court and the Supreme Court proposals 151 to 167, but therein has been raised the question of the appointment or not of a civil servant to the Federal Court. Would it be competent for us to raise the point that it is an anachronism, in these days even to appoint Indian civil servants as judges of the High Court?—My Lord Chairman, I would hope very much that we should not get into this issue to-day. We did discuss it at some length the other day, but as a matter of fact before we get out of it Sir Malcolm would just add a word to what I have said, because it would complete my answer on the subject to Sir Hari Singh Gour. (Sir Malcolm Hailey.) I only desire to add a word, that the subject should not be treated as if it merely meant the possible appointment of Indian civilians to the Federal Court. What is contemplated is that anyone who has been for five years in a High Court will become eligible. A man might be appointed to a High Court who was not an Indian civilian at all but who had entered the Service as a sub-Judge and who had spent the whole of his life in the judiciary. He enters after passing his law examination and sometimes after a year or two as a pleader. After that he passes the whole of his life in the judiciary and is frequently appointed to a High Court. One has to take into consideration the claims of those officers also.

Archbishop of Canterbury.

14,299. Is there not some misunderstanding, because he would come under (c) of paragraph 153?—(Sir Samuel Hoare.) No, he would not. (Sir Malcolm Hailey.) He would come mainly under (a) or (c).

14,300. I thought Sir Malcolm said that such a person as he had in view would begin as a pleader in some subordinate Court?—He would begin as a sub-Judge.

Sir Phiroze Sethna.

14,301. Would not a sub-Judge be a pleader?—Yes.

Sir Hari Singh Gour.

14,302. Not necessarily?—Not necessarily.

Mr. M. R. Jayaker.

14,303. He would have to be at the Bar for about two or three years before he is appointed?—Not always.

Dr. Shafa'at Ahmad Khan.

14,304. There are examinations for sub-Judges?—Yes.

Sir Phiroze Sethna.

14,305. Paragraph 153 deals with the qualifications of the persons who can be appointed Judges of the Federal Court. Under (a) it is a person who has been for at least five years a Judge of a chartered High Court. In reply to Sir Akbar Hydari, you agreed, Secretary of State, to add the words "State High Court"?—(Sir Samuel Hoare.) I did not agree to any particular form of words.

14,306. I think he wanted to include "State High Court"?—Yes.

Mr. M. R. Jayaker.

14,307. But is not that covered by (b)?—Yes. It was because of that I was careful about agreeing to any form of words, but I did think at the time that it was probably covered by (b).

Sir Akbar Hydari.

14,308. Not quite?—Anyhow I will look into it.

Sir Phiroze Sethna.] Under (c) of the same proposal Sir Akbar asked if you would agree to include pleaders and advocates in the State High Courts. Have I your permission, my Lord Chairman, to ask Sir Akbar Hydari if these pleaders and advocates in State High Court have the same qualifications as pleaders and

advocates of any British Indian High Courts ?

Sir Akbar Hydari.] Yes, I think so—certainly of my own Court.

Dr. Shafa'at Ahmad Khan.] In every State ?

Sir Akbar Hydari.] I am speaking only from what I know.

Sir Phiroze Sethna.] But you asked for the inclusion of State High Courts under (c).

Sir Akbar Hydari.] Yes.

Sir Phiroze Sethna.] It may be that the pleaders and advocates elsewhere may not have the same qualifications as pleaders and advocates of the State High Courts.

Sir Akbar Hydari.

14,309. The Secretary of State has said that he will consider that ?—Anyhow it would be quite incredible that a high appointment of this kind should be made of an advocate of very low training.

Sir Phiroze Sethna.

14,310. I admit that. You said this morning that you would consider the suggestion of raising the maximum age for a Judge to retire to sixty-five. May I know if you have any proposals to make to-day in regard both to the number of Federal Judges and their salaries, or would you leave it to the Committee to make a recommendation in their Report ?—Yes, either the Committee or Order in Council later on ; but quite definitely we hope that at the start there will not be a large number of Judges ; the number would be strictly limited.

14,311. Have you any idea of the numbers ?—It is very difficult to say until it is quite clear what duties are being imposed upon the Court. Perhaps I had better not give you a number. I could point to other Supreme Courts, and there Sir Phiroze would find that the number of Judges is very small—even in the Supreme Court of the United States.

14,312. As to the salaries, I take it that they will be higher than the salaries of puisne Judges ?—Certainly.

14,313. The amount has not yet been fixed ?—No ; but the amount would have to be sufficient to attract the very best men.

14,314. In the Third Report of the Federal Structure Committee, which appears in the Proceedings of the Second Round Table Conference at page 28, paragraph 61, with regard to all these points it was suggested that the matter might be referred to a small Committee for report at a reasonably early date. Was any Committee ever appointed at any date ?—I do not recall it reporting. I will look it up and see.

Marquess of Reading.] May I just deal with this matter ; I have been trying to look it up rather hurriedly ; but the Judicial Committee of the Privy Council really consists of those who have held high judicial office and Members of the House of Lords. The exact words are : " The Judicial Committee of the Privy Council consists of the Lord Chancellor, the Lord President and ex-Lords President," (They are not, of course, necessarily lawyers and do not sit.) " The Lords of Appeal in Ordinary " (those are the Legal Members of the House of Lords) " and such other Members of the Privy Council who have from time to time held or hold high office within the meaning of the Appellate Jurisdiction Act." If I may give an instance, having been Chief Justice, that makes me a Member of the Judicial Committee of the Privy Council and of the House of Lords ; but the appointments are not made from the Bar to the Privy Council. They are made from the House of Lords ; then when a Member sits as one of the Lords of Appeal in Ordinary he has then a right *ipso facto* to sit on the Judicial Committee of the Privy Council.

Lord Rankeillour.] But strictly, Lord Reading, the Lord President need not be a Member of the House of Lords.

Marquess of Reading.

14,315. I do not think so ?—(Sir Samuel Hoare.) He is not at the present moment.

Marquess of Reading.] He is specially mentioned. The Lord President and ex-Lord President have the right to sit, but in point of fact I have never known them sit.

Mr. M. R. Jayaker.

14,316. About paragraph 155, sub-paragraph (ii), Secretary of State, did I understand you to say in reply to a question by Sir Akbar that the Instrument of Accession would be included in this sub-paragraph?—Yes.

Mr. M. R. Jayaker.] My difficulty is this: the sub-paragraph speaks of this: "any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a State". I understand from the scheme of the White Paper that the Instrument of Accession would be entered into between the Governor-General at his discretion and the State. That is not the same as the Federation and the State, so if you intend to include them, the paragraph will have to be altered. It only speaks of agreement between the Federation and the State.

Sir Akbar Hydari.

14,317. I thought the definition proposed was under sub-paragraph (i)?—It is so; it is under paragraph 155 (i).

Mr. M. R. Jayaker.

14,318. "Any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder"; that is arising under the Constitution Act. I wonder how the Instrument of Accession can come under that wording, "rights or obligations arising under the Constitution Act"?—It is intended that it should come under sub-paragraph (i).

Marquess of Reading.

14,319. It would have to be redrafted, would it not?—We are not dealing here with a Bill, we are only dealing with the outline of a scheme.

Mr. M. R. Jayaker.

14,320. Yes; then as to paragraph 118, about which you were asked by Mr. Zafrulla Khan, I do not quite see how the working of that paragraph will be. You say there: "In order to minimise uncertainty of law and opportunities for litigation as to the validity of Acts, provision will be made

limiting the period within which an Act may be called into question". Then how will the time begin to run—from the passing of the Act?—Yes, I suppose so.

14,321. But supposing no case arises for, say, 15 years about the particular Act because nobody has brought the matter up before the Courts, would you say the time ran from the passing of the Act and 15 years after the matter could not be raised?—Our present intention is that the matter could not be raised indefinitely.

14,322. Although it is nobody's fault that the question does not arise in the course of 15 years?—The alternative is to leave this possible litigation open indefinitely. I should have thought that was a bad plan.

14,323. That is no hardship, because even now questions come up with reference to Acts which are 70 or 80 years old. They come up for the first time before a Court of law and the Court considers them. It is no particular hardship?—You see, Mr. Jayaker, paragraph 118 is very strictly limited. "In order to minimise uncertainty of law and opportunities for litigation as to the validity of Acts, provision will be made limiting the period within which an Act may be called into question on the ground that exclusive powers to pass such legislation were vested in a Legislature in India other than that which enacted it."

14,324. I am speaking of that. That means in the concurrent field, very likely?—Yes.

14,325. But my difficulty is that no case may arise which brings this question before a Court for 10 or 15 years?—We will look into Mr. Jayaker's criticism. Offhand, it does seem to me very necessary to do something to minimise the uncertainty of law and the opportunities for litigation if we can.

14,326. The present condition is this. Sir Samuel, that the Courts have power to consider the question whenever it may arise. It may be 15, 20, or 50 years after the passing of the Act, and the Court is not debarred from considering that question?—I am informed that a question of this kind cannot arise at all now.



14,327. There are several Parliamentary Statutes which have been modified by the Indian Legislature, and I remember several questions arising as to whether it was competent to the Indian Legislature to modify a Parliamentary Statute applicable to India?—(Sir *Malcolm Hailey*.) That is not quite the ground here. It is a contest between two authorities in India, and it is a very narrow ground on which it is sought to effect limitation.

14,328. In paragraph 156 you speak of the State Court. I suppose you mean a State Court of co-ordinate matters with the High Court of British India?—(Sir *Samuel Hoare*.) Yes.

14,329. That will have to be made clear?—Yes, it will.

14,330. Paragraph 158 says: "An appeal will lie without leave to the King in Council from a decision of the

Federal Court in any matter involving the interpretation of the Constitution Act." Will you take that with the next paragraph, paragraph 159: "There will be no appeal, whether by special leave or otherwise, direct to the King in Council." Am I to understand that this appeal to the King in Council from the decision of the Federal Court will arise in a matter which originally was considered by a State Court?—That is so.

14,331. That means in the last resort a question which arises in a State Court, which is of a constitutional character or falling within the extended jurisdiction, that you contemplate will be in the last instance decided by the Privy Council?—That is so, yes.

Mr. M. R. *Jayaker*.] I wanted that to be made clear.

(The Witnesses are directed to withdraw.)

Ordered, That this Committee be adjourned to to-morrow, 10.30 o'clock.

20th October 1933.

Present :

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.  
Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lient-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

*Chairman.*] My Lords and Gentlemen, the Secretary of State after the meeting last night asked me to find out whether the Committee would be agreeable to break our programme to the extent of concluding the Secretary of State's evidence upon the Courts this morning before we proceed to disussion. I have not the least doubt that the Committee

would wish to oblige the Secretary of State in that regard. At the same time, it is a breach of the programme, and the Secretary of State has therefore been good enough to say that if any Member of the Committee or Delegate not present to-day desires to put questions on the Courts, he will be pleased to answer.

The Right Hon'ble Sir SAMUEL HOARE, HAILEY, G.C.S.I., G.C.I.E., and Sir C.S.I., are further examined as follows :

*Chairman.*] We are continuing the Secretary of State's examination on the Federal and Supreme Courts, paragraphs 151 to 167.

Mr. M. R. Jayaker.

14,332. I wish to call attention to paragraph 160 : "The process of the Federal Court will run throughout the Federation," and so on ?—(Sir Samuel Hoare.) Yes.

14,333. I suppose the same procedure will be followed in the case of British India and the Indian States ?—Yes.

14,334. It will not be a question of the Viceroy being asked to enforce a decision in the domain of paramountty. The Court will operate on another Court ?—Yes.

14,335. There was a tendency at one time to make a distinction between the process which will be operative in British India and the process which will be operative in the Indian States. I think it will be the same, one Court operating on another ?—Yes.

14,336. Then, with regard to paragraph 164. I find in clause 2 of that paragraph that you have not repeated there the provisions which you have provided for in paragraphs 152 and 171. Is that omission intentional ? If you refer to paragraph 152, the last line, it

Bl., G.B.E., C.M.G., M.P., Sir MALCOLM FINDLATER STEWART, K.C.B., K.C.I.E.,

says that the salaries and pensions, etc., will not be liable to be varied to his disadvantage during his tenure of office ?—That is evidently an error in drafting.

14,337. It is not intentional ?—We intended to have the same safeguards for both.

14,338. I find it repeated in paragraphs 152 and 171. It is not intentional ?—No.

14,339. Then about paragraph 170, the last line, would you still consider the question whether you will not leave the rule unaltered which at present obtains, that the Chief Justice will always be a barrister. There is a very strong feeling in this connection in India that a man drawn from the Bar should be the Chief Justice. I do not want an answer now, but I would like you to consider it, having regard to the very strong feeling there is in the profession and among the public that the independence of the High Court is more likely to be maintained if you have in the place of the Chief Justice a man who will give a tone to the High Court and maintain the traditions of the High Court, and that these objects are more likely to be attained if you have a man drawn from the Bar ?—I have taken note of the view expressed by Mr. Jayaker and several other Delegates on the subject.

Marquess of Reading.

14,340. Will you also bear in mind, when you are considering that suggestion especially, that you have reserved, as at present proposed, the right of appointment of civilians with the proper qualifications to the Federal Court, and that therefore the suggestion that you should have a trained lawyer as Chief Justice may have some added effect? I only want you to bear that in mind?—Yes. I feel sure we must treat the whole of this question as a single whole.

Mr. M. R. Jayaker.

14,341. About paragraph 175, "the Federal Legislature will have power to regulate the powers of superintendence exercised by High Courts over subordinate Courts in the Province." I believe it is your intention to have in the new constitution a provision analogous to section 107 of the Government of India Act?—Yes. I do not want to refrain from giving an answer to Mr. Jayaker's question. I would point out that paragraph 175 is outside the chapter with which we are dealing, but, in order to avoid waste of time, I can tell him that that is our intention.

14,342. I just want to ask two questions on your memorandum?—Yes.

14,343. In paragraph 5, you say: "In paragraph 162 there is no intention to give the Federal Court any power of control over the High Courts of British India such as the High Courts themselves possess over subordinate tribunals in the Province." I follow that, but I suppose it is your intention that within the spheres of its being a Court of Appeal, it will exercise control and supervision over the High Courts as Courts from which appeals come to that Court?—Controlling and supervision has, so far as I remember, a rather technical meaning. I am not quite sure what it is that is in Mr. Jayaker's mind.

14,344. For instance, in support of an appeal from the High Court in certain events it must have the power of calling for the record. It must have power of control of the procedure of the High Court so far as appeals are concerned?—Yes.

14,345. That supervision and control which is limited to the proper exercise of its functions as a Court of Appeal?—Mr. Jayaker means purely for the Court of Appeal?

14,346. Yes; I am not speaking of control like the one that the High Courts have over subordinate Courts?—No.

14,347. But being a Court of Appeal and a superior tribunal, there ought to be some nexus established between the High Court and this Court?—Yes, I agree.

14,348. Then about paragraph 8, where you mention your proposal of staffing the Supreme Court as a side of the Federal Court, I just want to know one or two details. I suppose in the Constitution Act you will have all the essentials of the scheme enacted with permission to the Federal Legislature to bring them into operation whenever they think it desirable?—Yes.

14,349. The essentials of the scheme will be contained in the constitution?—Yes.

Sir Akbar Hydari.

14,350. Will that provide that the Court of Criminal Appeal would not be allowed to come in?—Yes; it would be upon the lines of the memorandum.

14,351. Would it allow a choice to the Federal Legislature for British India to have a Federal Court separate and a Supreme Court both for Civil and Criminal Appeals as in the White Paper, or do you definitely limit the choice in the Federation Act to having only a Supreme Civil Court division added to the Federal Court and having an absolutely separate Court of Criminal Appeal?—That is the general line in our mind, namely, the line set out in the memorandum.

14,352. You would not allow the alternative to the Federal Legislature or to Parliament that if they desire they could have the Supreme Court on the lines of the White Paper; that is the Supreme Court division and the Federal Court absolutely separate?—I think it is very difficult to put alternatives into an Act of Parliament. I would not like to say that anything is final. The Committee no doubt will want to consider this question further.

14,353. Yes ?—But our present plan would be to put one scheme into the Act.

14,354. We are much more in favour, as you know, Secretary of State, of having the Federal Court absolutely by itself ?—Yes. :

14,355. And we would agree to having the other Bench, the Supreme Civil Court Bench, with hesitation ?—I see.

Marquess of Salisbury.] Will Sir Akbar mind saying why they would so much prefer the other plan ?

Sir Akbar Hydari.] Our reason has been that, in the first place, we want a Federal Court to consist of judges who are really of outstanding merit, and the number of such judges, as you may readily understand, is very limited. The smaller the number the more select will be our choice, and then, secondly, the judges on the Civil Court side will have to decide cases from British India, and, therefore, they will be judges who have had more experience of British Indian work. Looking at human nature as it is, they will come with a bias or a certain mentality of British India being predominant, whereas in the Federal Court we want a number of judges who are there selected actually with a view to constitutional questions and holding the scale even between all the units of the Federation.

Marquess of Salisbury.

14,356. Thank you ?—Sir Akbar will no doubt keep in mind the risk of keeping the two quite separately, a risk that has been very much emphasised to me by the experts, namely, that if you have these two separate Courts, almost certainly they will get into conflict with each other.

Sir Akbar Hydari.] I am not sure whether that cannot be provided for in two ways : In the first place by allowing the Chief Justice of the Federal Court to permit judges of this Court to sit on the Supreme Court, but not *vice versa*, and, secondly, whether (I do not know : I am a layman, but I put it to you for investigation) you cannot arrange that the Chief Justice of the Federal Court might function also as the Chief Justice of the Supreme Court ?—I think I know Sir Akbar's position. Of these two alternatives he prefers one, but he does not

go so far as to say that the other is impracticable.

14,357. No. If that is adopted, then I would like that the references should be in the way which I have stated ?—Yes.

Sir Austen Chamberlain.

14,358. If Sir Akbar Hydari's suggestions were followed in their entirety, would there be a very great distinction between the two Courts and the two sides of one Court, if the Chief Justice presided in both and a considerable proportion of both were the same individuals ?—I would have thought myself there would be very little difference, speaking as a layman.

Sir Akbar Hydari.] May I say that the difference would be this, that the judges of the Federal Court would be small in number whom we would require (about five or so), and they would be selected specially for that purpose, and nothing else, and they might be allowed to sit and hear appeals, but not the large number of judges that you would require for the other division. They would be selected with reference to the work which they are going to do, and they might be reinforced by judges from the other side, but not *vice versa*. That is the difference.

Marquess of Reading.] It is rather drawing a distinction between the type of Judge that you would get for the two Courts when they are both to be of a Supreme Court. I do not want to discuss it now as it will come up for consideration, but I would suggest to Sir Akbar Hydari that there really is no substance in the end in that, because you get men of high judicial merit selected, as you must, for these places, which are the highest places on the Judicial Bench of India, and although it is true, I agree, that there would be fewer of the most outstanding merit, that would not prevent the Court being a very effective Court for some of the Judges who are really of greater merit than others. That must always happen.

Sir Akbar Hydari.] Is it not well known, even with regard to the High Court Judges, that one Judge is supposed to be a very good criminal Judge, another a very good civil Judge, and so on ? I have that sort of point in view.

Marquess of Reading.] That has the advantage that when the Judges are sitting together they get the benefit of that one Judge's view of great experience and they apply their own minds to it. That is the present practice.

Mr. M. R. Jayaker.

14,359. In your Memorandum, speaking of the Criminal Court, will you also have in the Constitution Act the essentials of this Court in the form of a scheme?—Yes; I think we ought to.

14,360. Then you will leave it to the Legislature to bring them into operation in detail by its own vote?—Yes.

14,361. But the essentials will be in the scheme?—Yes.

14,362. My last question is on paragraph 9. You there suggest: "I doubt whether these fears are well-founded, if the right of appeal to the Federal Court on other than Constitutional or Federal matters were, in addition to limitations based on suit value, to be strictly limited (as I hope would be the case) to cases where some important point of law is involved" and so on?—Yes.

14,363. My difficulty is that you will have to make the jurisdiction of the Federal Court co-extensive with the present jurisdiction of the Privy Council. You are substituting this Court as a Court, in certain events, which will take the place of the Privy Council, and, therefore, you must make the jurisdiction of both the Courts co-extensive. You cannot limit it more?—I think that would be the case. I would like to consult my advisers on the point, but it appears to me that that must be the case.

14,364. This would make the jurisdiction of the Federal Court more limited than the present jurisdiction of the Privy Council, and I am asking whether it is possible and advisable to do so?—I will certainly consider that point.

Mr. N. M. Joshi.

14,365. May I ask a few questions, my Lord? My first question is on paragraph 155. According to that paragraph, private persons whose rights may have been violated have no right to go to the Federal Court?—They have no right to go direct to the Court. They go to the Court as a Court of Appeal.

14,366. I will give you an instance. As a Member of the Federal Legislature a man may have the right to introduce a Bill. It may be held that that Bill is *ultra vires* of the Federal Legislature. The man feels that he has a right to introduce that Bill, and he wants that Constitutional question to be decided by the Federal Court?—He must go first to his Provincial Court, and then eventually, if he wishes to appeal against its ruling, he goes to the Federal Court.

14,367. So the Provincial Court can take cognisance of the Constitutional matters of this kind?—Yes; certainly, in that way.

14,368. I put to you another difficulty?—I am not, of course, arguing whether the ruling of the Speaker of the Chamber might not come in. I am merely taking the point as put by you and assuming it is possible within the Parliamentary rules.

14,369. It is possible, you mean, that according to the Parliamentary rules the ruling of the Chair cannot be made a subject of litigation?—I think off-hand—this is raising a new issue—it would be a great mistake to bring questions of Parliamentary procedure into the Courts.

14,370. I gave that only as an instance?—Yes.

14,371. There may be other rights which individuals may like to have decided by the Federal Court. My second question is on paragraphs 156 and 158, where you give a certain privileged position to people who have got more money than others. According to these two paragraphs, you give a right of appeal to the Federal Court to those people who have got more money and whose disputes involve large amounts of money. My question to you is this: As a matter of Constitutional propriety and natural rights, all people should be equal in the eyes of the law. Why should you give a privileged position to people who have got more money than others?—We do not want to give a privileged position to anybody, but we do want to prevent the court being snowed under with an enormous number of cases. This is, generally speaking, the practice that is adopted everywhere. I think I should be right in saying that in every Federation there is some kind of restriction upon these appeals.

14,372. It is quite possible that in some cases the financial value under dispute is not easily computed. I will give you an instance. Take, for example, a case arising under some labour law; it is a question of hours of work affecting millions of people. If there is a dispute about an interpretation of a labour law affecting millions of people, although there may not be actual value in that dispute, really speaking the total amount involved, if you take into consideration the financial effect of the provision, may be very large?—That is a point that was raised by Mr. Zafrulla Khan yesterday and I said I would look into it again. I will look into it again.

Marquess of Reading.] Secretary of State, may I make one suggestion in answer to Mr. Joshi? We have very much the same kind of system here. I do not want to go into it in detail. You cannot help putting a limit of value upon rights of appeal, but whenever such a case as Mr. Joshi mentions occurs, and, of course, such cases frequently do occur, the remedy in it is in the leave of the court or in the leave of the Federal Court. That is how these matters are always determined in our courts in this country.

Mr. N. M. Joshi.] The point was, my Lord, that in one case where the face value of the dispute is large you can make an appeal without the leave of the court, but in the other case, where really the value to the community affected may be much larger, you require leave.

Mr. Morgan Jones.] Would not Lord Reading's suggestion add to the expense? Applying for the leave of the court means added expense.

Marquess of Reading.] I should have thought not because, at any rate, from experience of the courts here, when you get a question, especially a labour question, the amount involved in it may be small for the particular individual who is suing, but it may, of course, affect a large number of men, or may be a very important question of right. The answer to it always is that the Court gives the leave for that reason and there is no necessity for any further expense. I am speaking, naturally, of the courts in this country, and I have no doubt that there would be exactly the same system in India, where the Judges conduct their cases as we do here.

Dr. B. R. Ambedkar.

14,373. Secretary of State, I just want to ask one question about paragraph 155. I do not understand the distinction that seems to be made there. I find on reading paragraph 155 that you make a distinction in the matter of the exclusive original jurisdiction of the Federal Court on the basis that where the parties to the dispute are as there mentioned in sub-clauses (a) and (b), the exclusive original jurisdiction is given to the Federal Court, but the Federal Court cannot have an exclusive original jurisdiction if the parties are private individuals. Now the question I would like to ask is this. The issue in both cases is the same, namely, the constitution issue involving the interpretation of the Constitution Act. What I do not understand is this. Why there should be this distinction in the matter of an exclusive original jurisdiction of the Federal Court based on parties when the issue is the same?—I think this is what usually happens with Federal Courts that the original jurisdiction is jurisdiction between units, and it is in the appellate jurisdiction that the individual comes into it as of right.

14,374. I mean, if the intention is that where, for instance, the interpretation of the Constitution Act is involved, the matter should at once go to the Federal Court, then I think there can be no distinction made whether the parties are parties which are units of the Federation or of individuals?—I would have thought that this was one of the necessary working conditions of a Federal Court. I think if it had original jurisdiction in individual cases as well it would be entirely swamped with cases.

Dr. B. R. Ambedkar.] But, all the same, the issue in both cases would be the same, namely, the interpretation of the Constitution Act. I can quite understand the distinction being based upon different causes of action, but where the cause of action is the same, or rather the plea is the same, namely, that there is a breach of the constitution, I do not see any justification in making this distinction based upon units and parties.

Marquess of Reading.

14,375. Is it not rather for the purpose of preventing numbers of applications

which might be made by individuals for all kinds of cases? They would be legitimate in one sense under the court, but, Secretary of State, you limit this original jurisdiction under the constitution to disputes between the units?—That is so.

14,376. Leaving it for agreement after the Constitution Act for any individual. That is the limitation you place upon it?—That is so, and I think Lord Reading would agree with me when I say that this is the regular basis upon which a Federal Court works.

Mr. M. R. Jayaker.

14,377. There is another reason for it in support of this, that if you put under Proposal 155 litigation between a private party and a State or a Province you will thereby drive the private party in every case to seek his relief in the Federal Court?—Yes.

14,378. And it will be more easy to file the suit in a Provincial or State Court where he is residing rather than in every case to go up and file a suit there. It would be far more expensive to do that?—I should have thought that certainly was so. It is really bringing justice to the man's door.

Sir Manubhai N. Mehta.

14,379. And the man must, first of all, exhaust his remedy in his own court before going to the Federal Court?—Yes.

Dr. B. R. Ambedkar.

14,380. Now there is another question which I wish to ask the Secretary of State, and it is this. I do not find any provision in the White Paper about it. Do not you think, Secretary of State, it is desirable that there should be provision made allowing private individuals to sue for a declaration that a particular act is unconstitutional, although he is not seeking any specific relief? I mean, all the cases that you have provided for I find are cases in which some specific relief is asked for. It may be desirable that a private party, in order to safeguard his future, may like to test at once if he has any doubts whether the particular proposal made by the Federation or by a Province is unconstitutional so that he may safeguard his position for the future, although, at the moment, when he is filing the suit for the proceedings, he has

no reason to seek any specific relief?—I have some hesitation, not being a lawyer, in answering a question of that kind, but if I may give off-hand the answer of a layman I would have said that it was extraordinarily difficult to allow a general right of that kind without any specific issue affecting the individual.

Marquess of Reading.] May I make the observation that what you have said is really the law as it is applied in this country. We do not allow these applications of what are called *Qia timet*, that is to say, merely a case of difficulty hereafter to get a declaration when there is no substantial dispute and the moment there is a dispute it can be done. We never allow it, and I do not think they do in India.

Sir Hari Singh Gour.] No cause of action; no right of suit.

Mr. Zafulla Khan.] Indeed there would be very great difficulties if such a provision were inserted in the Constitution. You would start a million suits being instituted in India the moment the Act was passed.

Dr. B. R. Ambedkar.

14,381. I do not know whether everybody will exercise his right?—It would be an excellent affair for the legal profession in India.

Lord Rankeillour.

14,382. Did I understand you to say that you could go to the Provincial High Court at present and get an interpretation of the Constitution Act for what it is worth without any suit or action?—No, I said exactly the opposite.

Lord Rankeillour.] I thought it must be so. I understood you wrongly.

Sir Hubert Carr.

14,383. There is only one question I want to ask. Is there anything in the White Paper to allow a subject of British India to bring a suit against a State? I mean is there anything under any of these Courts, the Supreme Court, the Provincial High Court or the Federal Court, by which that could be done?—I am not quite sure what Sir Hubert means. Does he mean a case against a State, that is to say, the ruler of a State?

14,384. Yes?—No, there is not.

14,385. The question came up at the Round Table Conference?—I do not see how there could be unless the ruler of the State agreed to make himself amenable to a suit of that kind.

14,386. Is there any suggestion of trying to secure that agreement?—No, there is not, not in our proposals.

Mr. *M. R. Jayaker.*] Does he not make himself amenable by entering the Federation?

Marquess of *Reading.*

14,387. A sovereign does not, surely?—I would have thought not.

Mr. *Zafrulla Khan.*

14,388. Would it be possible under the White Paper proposals to institute a suit against the Government of a State?—I should like to look into this rather technical question. If I may, I would send Sir Hubert Carr an answer upon it.

Mr. *Zafrulla Khan.*] The case I have in mind is this: Supposing in future the Government of the United Provinces enters into a contract with a private person for the supply of certain material and there is a dispute over that. That person, of course, can sue the Government of the United Provinces; but supposing the Government of State A entered into a similar contract with a private individual, could a civil suit be instituted? The real difficulty in that matter would be that very often the ruler of the State is the Government of the State.

Sir *Hubert Carr.*

14,389. That is exactly the point I have in mind?—I should like to look into this point.

Sir *Akbar Hydari.*] Where would the cause of action arise? I mean, if the Government or the State entered into a contract about something in British India, then it would be a question, but not otherwise.

Mr. *Zafrulla Khan.*] You would not give the right of a suit to a contractor in Hyderabad.

Sir *Akbar Hydari.*] So far as we are concerned, we have got an Act that in such cases where there is a demand against the Government it is first of all submitted to our Advocate-General to consider whether we should file that case

or not. Then once we give leave he can sue.

Mr. *Zafrulla Khan.*] British India has exactly the same provision.

Sir *Manubhai N. Mehta.*] I know several States have exactly the same provision.

Mr. *M. R. Jayaker.*] I should like the Secretary of State to consider this question. You cannot sue an Indian ruler except with the consent of the Governor-General.

Marquess of *Reading.*] With very limited conditions.

Mr. *M. R. Jayaker.*

14,390. That is already so when there is no Federation, but when they come into the Federation and become a part of the Federation, does it not involve that they submit to all the obligations to which the Provinces submit, and if a Province could be sued by a private individual under the circumstances mentioned by Mr. *Zafrulla Khan* I wondered why any distinction should have been made between a State and a Province in that behalf after it has come into the Federation?—As I say, I would prefer not to give an answer upon a question of that kind this morning. I will look into it and take note of what has been said upon the subject.

Sir *Austen Chamberlain.*

14,391. If the Secretary of State prepares a note on the subject perhaps he would allow the Members of the Committee to see the note and not send it only to Sir Hubert, who asked the question, because it is a matter of general importance?—I will certainly see that the note is circulated to the Members of the Committee.

Lord *Randellour.*

14,392. May I ask the Secretary of State a question to clear up something that was said yesterday? I asked him yesterday what would happen if an appeal on an ordinary matter not apparently involving the Constitution went to the side of the Federal Court which we have called the Supreme Court side, and if when it got there a plea on a Constitutional matter was raised. I understood you then to say that it



would have to go over to the other side, but later on in answer to Lord Reading I think you said that all the Judges would have equal jurisdiction as it was all one Court. If that is so would not the ordinary Court of Appeal have power to decide an action even though a Constitutional point was involved?—No. I was contemplating that although the Court would be a single Court there would be these two benches—I think that is the right expression—and a case like that would be withdrawn from one to the other.

14,393. But only the point of law would be withdrawn?—Yes.

Marquess of *Reading*.

14,394. Do you mean in the Federal Court, Secretary of State?—Yes.

14,395. Withdrawn from one to the other?—Yes.

14,396. I rather understood you to say the opposite yesterday, at least if we are understanding one another. The point did come up yesterday, and assuming that you have the two branches composed of Judges of the Federal Court and then in the one branch which was dealing with what we may call the Supreme Court matters a Constitutional question came up, I understood that the point that was put to you then was, would that Court have to refer it to the other Court—that is the other branch of the same Court. I suggested to you, and I thought you accepted it, that it certainly would not, because every Judge of the Federal Court would be a Judge with the jurisdiction of a Judge of the Federal Court. Supposing four or five Judges are sitting trying what would not be purely Constitutional questions and a Constitutional question came up, they have the power because they are properly qualified Judges to decide that in the Federal Court and there need be no transfer. I thought you accepted that?—I think I accepted it in principle. I am not quite sure whether I accepted it in detail. What I have in mind is that the Federal Court would make its own rules for the conduct of cases of that kind, and I did not want to tie myself down too explicitly to the actual way in which they would deal

with those cases, but I did not want to say anything to imply that there was not a distinction between cases involving a Constitutional issue and cases that did not involve a Constitutional issue.

Marquess of *Reading*.] If I may say so, I quite agree with that. The only point that I was putting to you, and I thought you accepted it and do now, is that notwithstanding that you have the two branches each Judge of the Federal Court has co-equal jurisdiction with the other, that you do not limit it in that way, and that consequently, as so often occurs in Courts here, and I have no doubt in India, a question comes up which that branch was not constituted specially to deal with, but they deal with it because the Judges are Judges for that purpose although they are still in another branch: that is a matter that comes up constantly in the Courts here.

Sir *Abdur Rahim*.

14,397. It is the same in India, if I may say so: each Judge exercises the jurisdiction of the entire High Court?—I will certainly take note of what Lord Reading has said on the subject.

Sir *Akbar Hydari*.

14,398. That is what makes it more restricted?—That is why I was very careful not to restrict myself to any acceptance of the detail.

14,399. Having heard all this and especially what Lord Reading said about the possibility of having a common Lord Chief Justice of the two Courts, I withdraw that suggestion?—No, Sir Akbar, you must not do that. I have not gone so far as either to accept or to refuse the proposal with regard to details.

Sir *Akbar Hydari*.] What I said was that having heard what Lord Reading said about the consequence of having a common Lord Chief Justice of the two Courts, I withdraw my suggestion that the Chief Justice of the Federal Court might also work as the Chief Justice of the Supreme Court.

Marquess of *Reading*.] I will not say anything except that I have not said anything at all about the Chief Justice of the two Courts.

(*The Witnesses are directed to withdraw.*)

Ordered, That the Committee be adjourned to Monday next, at 5 o'clock.

6th November 1933.

## Present :

Lord Archbishop of Canterbury.		Major Attlee.
Lord Chancellor.		Mr. Butler.
Marquess of Salisbury.		Major Cadogan.
Marquess of Zetland.		Sir Austen Chamberlain.
Marquess of Reading.		Mr. Cocks.
Earl of Derby.		Sir Reginald Craddock.
Earl of Lytton.		Mr. Davidson.
Lord Middleton.		Mr. Isaac Foot.
Lord Ker (Marquess of Lothian).		Sir Samuel Hoare.
Lord Irwin.		Mr. Morgan Jones.
Lord Snell.		Sir Joseph Nall.
Lord Rankellour.		Miss Pickford.
Lord Hutchison of Montrose.		Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

## INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.		Mr. Y. Thombare.
Sir Manubhai N. Mehta.		

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.		Sir A. P. Patro.
Sir Hubert Carr.		Sir Abdur Rahim.
Mr. A. H. Ghuznavi.		Sir Phiroze Sethna.
Lt.-Col. Sir H. Gidney.		Dr. Shafa'at Ahmad Khan.
Sir Hari Singh Gour.		Sardar Buta Singh.
Mr. M. R. Jayaker.		Mr. Zafrulla Khan.
Mr. N. M. Joshi.		

The MARQUESS OF LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined.

*Chairman.*

15,363. Secretary of State, before you begin your evidence to-day, I understand there is a matter to which you would like to make reference?—(Sir Samuel Hoare.) There were three preliminary observations that I should like to make. The first observation is with reference to the Memorandum that I have circulated. Members of the Committee will see that it makes no new proposals. What it does attempt to do is to elaborate what is intended under Clauses 122 to 124 and to make our

object more precise. Secondly, I would venture to suggest to the Committee and the Delegates that we should restrict the examination this afternoon to the questions that directly arise from Clauses 122 to 124 and from the Memorandum that I have circulated: that is to say, I would suggest to them that we should not deal this afternoon with the question of the Fiscal Convention and tariff autonomy, a question which does not come within Clauses 122 to 124 at all. I have, however, received a communication from Mr. Jayaker and Sir Phiroze Sethna asking for further elucidation upon certain

points connected with the Fiscal Autonomy Convention, as a result of the evidence that was heard last Friday. I would suggest to you, my Lord Chairman, that the time for that further elucidation would be the moment when we reach, I think it is, Section 6 of your Agenda, namely, that head dealing directly with tariff questions. In the meanwhile I should propose, in reply to Mr. Jayaker's communication, to circulate a Memorandum on the subject to the Committee, a Memorandum that it may well be the Committee would desire to publish with the Proceedings in due course. I think also, subject to what Mr. Jayaker and Sir Phiroze Sethna say, it would be a good thing to circulate with the Memorandum the letter that they wrote to me raising a series of questions.

Those, my Lord Chairman, are the only two observations I wish to make before my evidence.

There is one further point, my Lord Chairman. I imagine that in the course of our discussions this afternoon both members of the Committee and the Delegation will constantly have to refer to the Memorandum that I have circulated, a Memorandum that to some extent takes the place of Clauses 122 to 124. That being so, I think it would be best if the Memorandum were circulated as a preliminary statement made by me to-day before my evidence.

*Chairman.*] Thank you. I take it the Committee is prepared to fall in with the suggestion of the Secretary of State. *The following Memorandum is handed in.*

November 3rd, 1933.

**CONFIDENTIAL MEMORANDUM No. A. 68.—JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM. DISCRIMINATION (Paragraphs 122-124). THE OBJECTS IN VIEW.**

**MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA.**

1. The general principles upon which we have based our proposals in relation to Discrimination may be stated very shortly as follows :—

(i) S. 96 of the existing Government of India Act, reproducing in substance s. 87 of the Government of India Act, 1833, provides that

“no native of British India nor any subject of His Majesty resident therein shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any office under the Crown in India”

and Queen Victoria's Proclamation of 1858 contained well-known passages to the same effect.

(ii) In January, 1931, the Round Table Conference adopted the following resolution :—

“At the instance of the British commercial community, the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India and the rights of Indian-born subjects”

and recommended that these rights should be regulated on a reciprocal basis.

2. Our proposals, on this subject in paragraphs 122 and 123 of the White Paper were intended, broadly speaking,

(a) to invalidate certain classes of legislation with the object of giving general protection to all British subjects in India, whatever their domicile, against discriminatory legislation (paragraph 122), and

(b) by the same means to give a more specific protection (paragraph 123) on a reciprocal basis for British subjects domiciled in the United Kingdom.

Close examination has shown that it is difficult to make clear our exact intentions if they are expressed in the very general terms of paragraphs 122 and 123 as they stand. A clear statement of the case necessarily involves exposition in considerable detail; in particular, the attempt to deal, as the White Paper does, in the same sentences with both companies and individuals has resulted in some lack of clarity.

Further, the general method of presentation adopted in paragraph 122 is so wide in scope as to be likely, even with the provisos which are attached to the paragraph, to place undue restrictions upon the powers of the Legislatures. Again, the form of paragraph 123 might prevent the Indian Legislatures from imposing regulations, reasonable and necessary in Indian conditions, upon individuals and companies engaged in trade in India.

The purpose of this memorandum, therefore, is to set out with greater precision, but with no further change of substance than is involved in meeting the difficulties to which I have just alluded, the objects which we had in view in framing the proposals in the White Paper.

*General declaration as to British subjects.*

3. (i) It is proposed that the Constitution Act should contain a general declaration that no British subject (Indian or otherwise) shall be disabled in British India from holding public office by reason only of his religion, descent, caste, colour or place or birth, nor, on the same grounds, from practising any profession, trade or calling.

*Special provision for persons who are British subjects domiciled in the United Kingdom.*

(ii) As regards British subjects domiciled in the United Kingdom in so far as they are not covered by clause (i), it is intended, subject to what is said in clause (v),

(a) to provide that no laws restricting the right of entry into British India shall apply to British subjects domiciled in the United Kingdom, subject to the right of authorities empowered by any legislation to exclude or remove undesirable persons to exercise that power in respect of an individual, notwithstanding the fact that he is domiciled in the United Kingdom; and

(b) to provide a special form of protection for British subjects domiciled

in the United Kingdom, in respect of the following matters:—

Taxation*	} in British India,
Travel and residence	
The holding of property	
The holding of public office	
The carrying on of any trade, business occupation or profession	

against statutory disabilities based upon domicile, residence, duration of residence, language, race, religion or place of birth.

*Special provision for companies incorporated in the United Kingdom but trading in India.*

(iii) As regards companies which are or may hereafter be incorporated in the United Kingdom and trading in India, it is intended to prevent (subject to the provisions of any Immigration Law which may be enacted consistently with clause (ii), and to the special provision as regards bounties and subsidies of clause (vii) (2)), the imposition in British India of any discriminatory taxation\* or of any statutory disability upon any such company, if the incidence of that taxation or disability is based upon

the place of incorporation of the Company, or the domicile, residence, duration of residence, language, race, religion, descent or place of birth of its Directors, Shareholders, or Agents or Servants.

*Special provision for companies incorporated in India.*

(iv) In the case of a company which is or may hereafter be incorporated in India, British subjects domiciled in the United Kingdom will (subject to the special provisions as regards bounties and subsidies of clause (vii) (2)) be deemed *ipso facto* to comply with any conditions imposed by law on the company in respect to the domicile, residence, duration of residence, language, race, religion, descent or place of

\* "Taxation" is intended to cover imports of all kinds, including, e.g., rates and cesses.

birth of its Directors, Shareholders, Agents or Servants.

*Provisions for reciprocity.*

(v) It is, however, intended to provide that if any restriction, disability or condition of the kind, and based upon any of the grounds, indicated in clauses (ii), (iii) or (iv), is imposed by the law of the United Kingdom (or by provisions having the force of law) affecting in the United Kingdom Indian subjects of His Majesty or companies incorporated in India, the provisions of those paragraphs will not apply to any Indian law imposing in British India the like restrictions, &c., based upon the same ground.

*Reservation of Bills which, though not in form, are, in fact, discriminatory.*

(vi) In addition, it is proposed that the Constitution Act shall require the reservation for the signification of His Majesty's pleasure of any Bill which, though not in form repugnant to the provisions indicated in clauses (ii), (iii) or (iv), the Governor-General (or Governor as the case may be) in his discretion considers likely to subject to unfair discrimination any class of His Majesty's subjects protected by those clauses.

EXCEPTIONS.

(vii) The provisions indicated above will be subject to two other forms of exception or qualification :—

*Savings.*

(1) It will be necessary to save, notwithstanding the provisions of clauses (i), (ii), (iii) and (iv)

(a) laws which exempt from taxation persons not domiciled or resident in India ;

(b) laws in operation at the date of the passing of the Constitution Act (e.g., the Criminal Tribes Act) ;

(c) the due operation of the Governor-General's or Governor's special responsibility for the prevention of any grave menace to the maintenance of peace and tranquillity ;

(d) the right to legislate in the sense indicated in the proviso to paragraph 122.

*Exceptions in regard to bounties and subsidies.*

(2) It is proposed that an Act, which, with a view to the encouragement of trade or industry in British India, authorises the payment of grants, bounties, or subsidies out of public funds, may lawfully require, in the case of any Company not engaged in India at the time the Bounty Act was passed in the branch of trade or industry which it is sought to encourage, as a condition of eligibility for any such grant, bounty or subsidy, that a company shall be incorporated by or under the laws of British India, or compliance with such conditions as to the composition of the Board of Directors or as to the facilities to be given for training of Indians, as may be prescribed by the Act.\*

In the case of companies engaged in India in the trade in question at the time the Subsidy Act was passed, the general provisions indicated in clauses (iii) and (iv) will apply ; and such companies will be eligible for such grants, bounties or subsidies equally with Indian companies.

*Special provision for ships and shipping.*

(viii) While the foregoing provisions will go a considerable way towards safeguarding United Kingdom shipowners against discrimination in their Indian business, these provisions must be supplemented for the ships themselves. It is usual in all treaties relating to matters of commerce to specify not only individuals and companies but also ships, where it is intended to give rights in regard to matters of shipping and navigation.

There are, moreover, certain points which are definitely not covered by the general provisions outlined above, e.g., there is no provision safeguarding ships registered in United Kingdom ports. It is also desirable to secure the right of United Kingdom shipowners to employ in Indian trades officers holding United Kingdom certificates of competency, and

\*This proposal is intended to give effect to the recommendations of the External Capital Committee's Report, 1925.

to secure to such officers that they shall not be subject to discrimination.

For these reasons it is proposed that a provision on the following lines should be inserted in the Constitution Act :—

“Without derogation from the generality of the provisions as to discrimination, ships registered in the United Kingdom shall not be subjected by law in British India to any discrimination whatsoever, either as regards the ship or her officers or crew or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom.”

4. The proposals in paragraph 3 relate only to discrimination by legislative enactment, in which latter phrase is intended to be included action by any person or body exercising delegated legislative powers. It is intended to expand the phrase used in Paragraphs 18 (c) and 70 (d) of the White Paper to “the prevention of discrimination in matters affecting trade, commerce, industry or ships” and, by means of this special responsibility of the Governor-General and Governors, to give them such powers as are available to prevent discrimination by administrative action. It will be realised, however, that the provisions relating to legislative enactments in the sense just described are not intended to interfere with freedom of contract, or for example, that the stipulations relating to companies should in any way prevent persons desirous of forming a company from making in the Articles of the Company such provisions relating to their Directors Shareholders, etc., as they think fit, even though those provisions may be contrary to the principles laid down in clauses (ii), (iii) and (iv) of paragraph 3.

5. It should be specially noted that the proposal in clause (ii) of paragraph 3 will not apply to British subjects domiciled elsewhere in the Empire than the United Kingdom, and, in particular, will not debar the Indian Legislatures from imposing conditions upon, or restricting, the entry of such persons into India. For the grant of protection for the citizens of any Dominion, if such is desired, India will be free to negotiate with that Dominion, and it is intended

that appropriate provisions should be inserted in the Constitution Act to the effect that a convention to this end concluded between India and a Dominion would operate to make applicable to the citizens of that Dominion the provisions relating to British subjects domiciled in the United Kingdom.

6. As regards professional qualifications, it has been proposed

(i) that at the least every person now practising a profession in India on the strength of a British qualification shall be entitled to continue to do so ; and

(ii) preferably that the Constitution should provide that no law or regulations made in India for the purpose of prescribing the qualifications for any given profession shall have the effect of disabling from practice in India on the strength of his British qualification any holder of a British qualification.

I suggest that the Committee should consider quite separately the question of the medical profession on which I shall have something to say in the course of my evidence. As regards other professions, I see no need for specific provision in the Constitution to meet point (i), since the Governor-General and Governors would naturally withhold their assent from any legislation which purported to expropriate persons who have been qualified in the past. There are obvious difficulties which I have been unable to meet in conceding the second request as it stands. It is clearly reasonable that India should be in a position to require additional qualifications from new entrants to professions which are justified by the special needs of Indian conditions : for instance, it would not be unreasonable to stipulate in regard to pilots that, in addition to the usual sea-going qualification granted by the Board of Trade here, an applicant should be required to prove acquaintance with the particular tidal waters in India in which he proposed to practise as a pilot.

Marquess of Salisbury.

15,364. Secretary of State, I should apologise for the sort of questions that

I am going to try to put to you, but I know you will be the first to recognise that the subject is very complicated and that the complication is revealed in a very striking form in the Memorandum which you have been good enough to circulate?—Certainly I agree it is a very complicated question.

15,365. Therefore if I go over ground which you think is easily understood perhaps you will have some pity on the members of the Committee who are not so familiar with the subject as you are?—I hope Lord Salisbury and the Committee will also show a reciprocity of treatment towards me too.

15,366. I should just like to ask, so that the Committee might know, whether the Chambers of Commerce of the country have seen this Memorandum which you have circulated to us, because we shall want to know how it fits on to their evidence?—No, no one has seen this Memorandum except the members of the Committee.

15,367. Not even the Manchester Chamber of Commerce whose representatives were here on Friday last?—No, nobody. I can, however, say that we have had many discussions with representative people, and I think I am right in saying that upon the whole, apart from the details, they have been in favour of making the objects that we have in mind under Clauses 122 to 124 more precise, and that is what we have tried to do in the Memorandum.

15,368. All the Memorandum is important, of course, but the most material part seems to me to begin with paragraph 3. The first sub-paragraph lays down the general principle of equality as between a subject of His Majesty in India and a subject of His Majesty in the United Kingdom?—The general declaration covers all subjects of His Majesty everywhere.

15,369. Not in the Dominions; that is to be dealt with separately afterwards?—No; the general declaration covers every one.

15,370. But there is a special provision about the Dominions later on?—I think I would put it this way. I would say that there is a special provision about

British subjects domiciled in the United Kingdom.

15,371. When we come to consider the subject matter of discrimination it is dealt with in your Memorandum on its legislative side and on its administrative side?—Yes.

15,372. If I may, I will take the legislative side first. It applies, as I said just now, to British subjects in India and British subjects and Companies in the United Kingdom?—British subjects and companies trading, etc., in India, yes.

15,373. It is sub-paragraph (iii) of paragraph 3 which deals with the rights of British subjects in India other than Indians, and then paragraph 4 deals with British subjects and Companies in the United Kingdom. Let me put it in this way: The one deals with British subjects and British Companies, etc., domiciled in India, not Indians, and the other with British subjects and Companies domiciled in the United Kingdom, not Indians. My object, if I can do so, is to direct the Committee, with the assistance of the Secretary of State, to where we can find everything in looking through the Memorandum?—Paragraphs 3 and 4 deal with Companies incorporated in the United Kingdom or in India respectively, I prefer the use of the word "incorporated" to "domiciled." The lawyers tell me that "domiciled" is rather a dangerous expression sometimes.

15,374. "Domiciled" is a better word, of course?—Yes. The lawyers tell me that the term of art is "incorporated" rather than "domiciled".

15,375. The Secretary of State will forgive my mistake I think it would perhaps help the Committee if the Secretary of State could explain in a few words what is the difference of treatment between British subjects and Companies incorporated in India, legislatively I mean, and those incorporated in the United Kingdom. I see certain differences such as bounties, for example?—As a broad answer to Lord Salisbury's question I would say that the treatment is reciprocal in both cases, and that what is possible for the one is possible for the other. The basis of it is the basis of reciprocity of treatment.

Sir Austen Chamberlain.

15,376. Reciprocity between whom, Secretary of State?—Constitutionally, I suppose, between the two Governments.

15,377. No: we are dealing with Companies in paragraphs 3 and 4?—The basis of our proposals is this: We undertake that India will not take any action against a British Company that we here do not take against an Indian Company.

Marquess of Salisbury.

15,378. Is that the only distinction?—You asked me for the broad answer, Lord Salisbury, and that is the broad answer.

15,379. I mean there will be a difference as regards bounties; bounties might be given to the one and not to the other?—I understood Lord Salisbury in his question to exclude the question of bounties. That is why I said my answer was a broad answer. I would prefer, if he would, to deal with the bounty and the subsidy side of it separately.

15,380. Very well. That is perfectly fair. But I would call his attention and the attention of the Committee to paragraph (iii) of the Memorandum. There it will be seen that he says as regards Companies which are or may hereafter be incorporated in the United Kingdom and trading in India, "it is intended to prevent"—I leave out a few unnecessary words—"the imposition in British India of any discriminatory taxation or of any statutory disability upon any such company, if the incidence of that taxation or disability is based upon"—and then there are four heads, namely, the place of incorporation of the Company, the domicile, language, race, religion, etc., directors, shareholders, or agents or servants. Those would be the points upon which discrimination must not be based under that provision. Then if we come to (iv) which treats with the Companies incorporated in India, the phrase is that they are to "be deemed *ipso facto* to comply with" all the Indian laws. Now what I want to get clearly before the Committee is what is the difference between those two things: between the *ipso facto* compliance and the long list of heads which apply to the

Companies incorporated in the United Kingdom?—The object of (iv), Lord Salisbury, is to enable a new Company to be set up, against which discrimination would not be permissible. (Sir Malcolm Hailey.) The effect of (iv) is that as regards Companies incorporated in India or hereafter to be incorporated in India, if any Statute or Regulation applies to All-India Companies which is based on domicile, residence and the like, then it will be held that the fact that persons are British subjects entitles them to assume that they already comply with those requirements.

15,381. That is under (iv)?—Under (iv).

15,382. And with regard to (iii) the real truth is that the list of subjects recited in (iii) seem to me so inclusive that I cannot understand how the words "*ipso facto*" in the second paragraph add anything to them?—(Sir Samuel Hoare.) Surely this is the point, Lord Salisbury. The point of (iv) is to safeguard new Companies and to prevent the disabilities being inflicted upon new Companies that would not be legitimate in the case of old Companies.

Sir Austen Chamberlain.

15,383. Secretary of State, is that answer quite correct. Because the first sentence of (iv) runs: "In the case of a Company which is or may hereafter be incorporated"—it therefore applies to a Company already incorporated in India as well as one which may be incorporated in India in the future?—Yes: it safeguards, though, both types of Companies so far as the future is concerned. In the case of an existing Company some new condition might be imposed in India. In that case, if it is a British Company, the British Company cannot be disabled from the fact that it does not comply with that new condition.

Marquess of Reading.

15,384. May I ask one question upon that, Secretary of State? Would you mind looking at paragraph (iv)? Is not paragraph (iv) intended to deal with British subjects domiciled in the United Kingdom who may be acting in relation to a Company which is or may be incorporated? Is not the purpose of that



to show that these British subjects domiciled in the United Kingdom will be deemed *ipso facto* to comply with any conditions of the law of the country?—(Sir Malcolm Hailey.) We have to consider two types of Company. There is the Company domiciled in Great Britain which may be trading in India. Now the Indian legislature could not lay down with regard to that Company that it should be constituted in any particular way. All you can lay down with regard to a Company that is incorporated in the United Kingdom and is trading in India is that it should pay some extra taxation or that it should be subject to certain disabilities on account of the composition of its shareholders or Directors, and that is provided for in (iii). (iii) merely provides that if a Company is incorporated in the United Kingdom and trades in India, such a Company should not be subject to any disabilities on account of the fact that it is incorporated in the United Kingdom or that its shareholders are of a particular composition or class or nationality. Then we have to consider also the Companies which are purely Indian Companies, that is to say, Companies incorporated in India itself, and there the Legislature might lay down particular terms of incorporation which might inflict hardships upon certain Companies, that is to say, it might declare that the terms of incorporation should be such that you must have a certain proportion of shareholders or a certain class of Directors. Now the effect of (iv) is to say that if the Indian Legislature does lay down those rules of incorporation, which, of course, would apply to all Companies incorporated in India, then it shall be a sufficient compliance with those terms, that the Company shall be held to comply sufficiently with those terms as to domicile, residence and so forth if where the law lays down that they must be residents of India or the like they are domiciled in Great Britain; it has the same effect.

15,385. The *ipso facto* provision applies to British subjects domiciled in India?—Yes.

15,386. Not to the Company directly. Is it not for the purpose of protecting the British subjects who are domiciled in India and are either Directors or it may

be officials of the Company incorporated or to be incorporated in India, and the provision is that these British subjects shall be deemed *ipso facto* to have complied with the law relating to the Company. That is what the language implies. Is not that what is meant?—That is to protect the Company itself against any law which declares that the directors, shareholders and the like should be of a particular composition, and it is intended, therefore, to protect the Company.

Sir Austen Chamberlain.

15,387. Take a very extreme example in the hope that I shall get it clear. If, for instance, an Indian law declares that, to be incorporated, in a Company of a certain type every shareholder must be resident in India, if he were a British subject domiciled in Great Britain, he would be held to comply with that condition?—Yes, and therefore that is intended for the protection of the Company itself.

Marquess of Reading.

15,388. But the "*ipso facto*" provision applies to British subjects domiciled in India?—Yes. And it gives them a recourse to the Company in consequence. Otherwise I suggest to you you cannot very well make sense of this provision, because clearly the words "*ipso facto*" apply to the British subject and not to the Company.

Marquess of Salisbury.

15,389. No. (iii) applies to the Company and No. (iv) to British subjects?—Both apply to Companies.

15,390. Under 3 (vi), there is a very proper reservation, where it is a case of substances and not of form, giving power to the Governor-General, is it not?—(Sir Samuel Hoare.) To reserve a bill.

15,391. Where he thinks it is likely to do a mischief which these provisions against discrimination are intended to prevent, if he thinks it is likely to do it, even though in form it does not do it, he must reserve the Bill?—Yes, when he thinks it is likely to subject to unfair discrimination any class of His Majesty's subjects protected by these clauses.

15,392. And it applies to the Governor as well as the Governor-General?—Yes.

15,393. There are certain savings, first of all, the proviso, in Proposal 122, are just mentioned?—Yes.

15,394. I do not know whether the Secretary of State would like to say anything about those proviso. It is at the end of the first paragraph in Proposal 122?—It is questions such as the alienation of land in the Punjab, and questions of that kind that have to be specifically mentioned, otherwise it would be said that we were discriminating against a particular class in the Punjab.

15,395. Those provisos, of course, ought to be very carefully studied by those who, unlike myself, are competent to deal with them. They are very technical and difficult. Then there is the question of bounties. That I think comes under paragraph 3 (vii), sub-section (2)?—Yes.

15,396. And in the case of hounties, there is a distinction drawn between existing businesses in India and future businesses in India?—Yes.

15,397. As far as I understand, there is to be no condition as to existing businesses, no new discrimination as to existing businesses, but as to future businesses, certain discriminatory conditions may be laid down?—Yes; we take as the dividing line the date of the Subsidy Act. Until a Subsidy Act is passed, there can be no insistence upon the kind of conditions set out in the Memorandum. After that we feel that it is a new chapter, and that it would be restricting the Government of India too closely to prevent its laying down those kinds of conditions for the Post-Subsidy Act companies.

15,398. In the future, compliance with future conditions may be imposed, may it not?—Yes; after the Subsidy Act is passed.

15,399. So that as far as bounties on future businesses are concerned, there will be, or may be, discrimination?—To the extent of the permissible conditions that we have laid down. Nothing would, of course, derogate from the Governor-General's special responsibility for safeguarding the position against discrimination.

15,400. We are speaking of legislation all the time, of course?—We are speaking of legislation all the time, certainly.

15,401. And under the Legislative provisions, he can always veto, if he likes?—Yes; the power of veto remains. Constitutionally also, under his special responsibilities under paragraph 18, he could intervene either in the field of legislation or the field of administration. There is no distinction drawn between his action in the one or the other.

15,402. At any rate, to start with, as regards businesses after the Subsidy Act, then there may be certain discriminative conditions imposed, namely, that the Company shall be incorporated by or under the laws of British India or compliance with such conditions as to the composition of the Board of Directors, or as to the facilities to be given for the training of Indians, as may be prescribed in the Act. All this may apply to companies in India as distinct from companies incorporated in the United Kingdom?—Yes; but they will, of course, as Lord Salisbury sees, apply to all companies in India, both British and Indian.

15,403. Yes?—I would also remind Lord Salisbury that that is, to some extent, a continuation of the existing procedure. There have been cases of subsidies given, and there have been cases when conditions of this kind have been laid down.

*Marquess of Reading.*

15,404. They were laid originally, I think, by a Commission of Inquiry in 1924?—Yes; Lord Reading will remember it was during his Viceroyalty, and the proposals that we make now are based very much upon the Report of that Committee which was called the External Capital Committee.

*Marquess of Salisbury.*

15,405. Then I turn for a minute to the provisions protecting companies against administrative discrimination?—Yes.

15,406. As I understand, these are going to be provided by a slightly developed drafting of proposal 18 (c) and proposal 70 (d). They are the two special responsibility paragraphs?—Yes.

15,407. That is so, is it not?—Yes, and the reason is that we found that phrase “commercial discrimination” without any addition to it, was not sufficient and that you have to define it more explicitly upon the lines that we suggest in the middle of paragraph 4 of the Memorandum. For instance, we are informed that it is very necessary to include ships by name.

15,408. It is intended to expand the phrase used in paragraph 18 (e) and paragraph 70 (d) of the White Paper too—and then follows the quotation “the prevention of discrimination in matters affecting trade, commerce, industry or ships”?—Yes. The object of the change is not to introduce into the definition any new feature, but to make it quite clear what it was intended to cover.

15,409. I would like to put a question to the Secretary of State of a more general character. There are no directory words to the Governor-General or to the Governor in the proposal as to how they are to exercise their special responsibility. The whole of the new Memorandum on the Legislative side deals with the matter in great detail?—Yes.

15,410. But when we come to the administrative side, which is really the more difficult of the two, the operation of the two clauses about special responsibility is left absolutely vague. I have no doubt that is intended by the Secretary of State, but I should like him to tell the Committee, if he will, whether he intends the Governor-General and the Governor to exercise those special responsibilities on the same lines as are provided for the Legislative side in the other part of his Memorandum; or is he leaving it absolutely vague?—Speaking generally, my answer would be Yes. We do not make a distinction between the two in our minds. As to the indefiniteness of the phrase “commercial discrimination,” and the particular way in which the Governor-General or the Governor is to deal with it, we have really dealt with commercial discrimination in exactly the same way as we have dealt with all the other special responsibilities under paragraph 18. We feel on the whole that it is practically impossible

to be very explicit and that the more explicit you become the more you create suspicions on both sides, both British and Indian, and the more likely you are to find in the long run that you may very well have tied the hands of the Governor in a way in which his hands should not be tied. But Lord Salisbury will see that this is one of the special responsibilities, and we deal with it just as we deal with the other ones.

15,411. I was going to say, of all the special responsibilities it will be most difficult to administer. Would that be true?—I do not think I would myself say so, but it is a matter of opinion really.

15,412. May I explain?—Yes.

15,413. I was very much struck by a passage in the Report of the Federal Structure Committee of the Third Round Table Conference which is very much in keeping with the evidence given by the Manchester Chamber of Commerce on Friday. “The real safeguard against administrative discrimination must be looked for rather in the good faith and common sense of the different branches of the executive government, reinforced where necessary by the special powers vested in the Governor-General and the Provincial Governors.” That really, I think, interprets the view of the Government in the White Paper, does it not?—I think I would certainly say (and I do not think anyone would contradict it) that the real safeguard with all these things is goodwill on both sides, but that does not in the least lessen the importance that I attach to specific safeguards as an insurance against anything going wrong.

15,414. But a specific safeguard which is the special responsibility of the Governor and Governor-General really will not be able to take the place of the good faith and common sense of the different persons engaged in it?—It is a very different type of thing, is it not? It is very difficult to compare the two; they are not really in *pari materia*. I do not think I can say anything more than I have just said, namely, that goodwill is what is going to make everything work, but accepting all that, I still say that supposing on one side or the other

goodwill is not forthcoming, then I think these powers can be very effective.

15,415. You think they can. Let us hope it will not take place, but let us put the case in which there will be a responsible Government, either in a Province or in the Centre, who would decide to exercise unfair administrative discrimination against British trade. I know the Secretary of State wants to exclude trade for the moment, so I will say against British Companies. Supposing there was such a case, does he really think paragraphs 70 and 18, even when they are amended in the way he hopes, will be really effective? There would be really nothing to be done if the administrations were intent upon unfair discrimination?—No; I should not at all say that. I am not quite clear what kind of discrimination Lord Salisbury means. It is very difficult to deal with a question in the general. If Lord Salisbury would give me specific examples of the kind of discrimination he has in mind, I think I could show him that the Governor-General's intervention would be effective.

15,416. I suppose it would be in the power of the Governments either in the Provinces or in the Centre to make it very difficult for a British Company to operate in India by administrative regulations, or even more subtly by instructing their officers to put difficulties in the way?—But what sort of administrative regulations? Here again I find it very difficult to convince Lord Salisbury, if I do not know what is the specific danger that he has in mind. Setting aside for the moment subtle propaganda, could he give me an instance of the kind of regulations that he has in mind?

Marquess of Zetland.] Might I put a case?

Marquess of Salisbury.] If you please.

Marquess of Zetland.

15,417. The sort of case I have had in my mind is this. Supposing a Provincial Government calls for tenders, it may be for the Public Works Department, for contracts for road making or building or anything of that kind, and supposing tenders are put in by both Indian and British firms, and

supposing that the British tender on its merits is quite obviously the best, but supposing it is not accepted by the Provincial Government, but a tender by a purely Indian firm is accepted, it seems to me that that is the sort of case of discrimination which might arise. Would the Governor in those circumstances be justified in calling for the tenders, examining them and saying 'No, on the merits of the case, it is quite clear that the tender put in by the British firm is the most advantageous to the Provincial Government' and for that reason, and for that reason alone, laying down that the British tender would have to be accepted?—Certainly, if it was a serious case. I could quite imagine that there might be doubtful cases, in which it was very difficult for the Governor to convince himself that the tender had been given we will say, on racial lines, but if it was a serious case, then I should say, it would be the duty of the Governor to intervene.

Sir Austen Chamberlain.

15,418. Suppose the Governor found that tenders were awarded to Indian firms, irrespective of price, I suppose you would hold that that was discrimination, and that the Governor should interfere?—I should think certainly, in a case of that kind, the Governor would demand an enquiry and would satisfy himself or not satisfy himself that there had been discrimination. If he was satisfied that there had been discrimination, he would intervene.

15,419. Take the case where tenders are not called for publicly, but where it is alleged that the Government, having both Indian and British firms well fitted to tender, calls for tenders from the Indian firms only. Would that be an occasion for the Governor to act?—I would certainly say it would be a case for the Governor to hold an enquiry and satisfy himself whether or not there had been discrimination.

15,420. If he found there had been discrimination, he would cancel the contract?—I could not hear.

15,421. Would it be within his power if, as a result of the enquiry, he found there had been discrimination, to cancel

the contract?—His power is unlimited and undefined.

15,422. Could he hold up the contract pending an enquiry?—Yes.

*Marquess of Salisbury.*

15,423. I think one can see that if the Government considered nothing but tenders from Indian Companies, the Governor might intervene, but, if it was a case not quite so blatant as that, but where the Indian Government obviously preferred on several occasions an inferior Indian tender to a better British one, do you think it would be practical, as a matter of fact, for the Governor to interfere?—I think it must depend upon what importance the Governor himself attaches to the particular case. I can quite imagine (in fact I admitted it just now to Lord Zetland) that there may be very difficult borderline cases, in which it would be difficult for anyone to say whether this or that tender had been accepted for this or that reason, but I am assuming that where it really was a case of serious discrimination the Governor would certainly have his attention called to it. These are not the things that happen without anybody knowing about them at all, and in that case, the Governor should intervene.

*Marquess of Zetland.*

15,424. The position of the Governor would surely be a very difficult one in a case of that kind, would it not?—That is a matter of opinion. We can all give an equally good opinion on a point of that kind.

*Mr. Zafrulla Khan.*

15,425. What would Lord Zetland propose on that?—Perhaps I might follow up Mr. Zafrulla Khan's question. I do not know what Lord Zetland would propose as an alternative?

*Marquess of Zetland.*

15,426. I beg your pardon?—I do not know what Lord Zetland would suggest as an alternative.

*Marquess of Zetland.*] I am not at the moment suggesting any alternative. I am discussing the proposals of the Government.

*Lord Hutchison of Montrose.*

15,427. Secretary of State, Lord Salisbury suggested just now that if tenders would put out to Companies domiciled in India, and the Government excluded companies from Great Britain, it would be a form of discrimination, but surely an Indian Government might well, in order to get over unemployment, offer tenders to Indian Companies and exclude British Companies?—I do not think anybody is assuming that in every public tender in India British Companies from here would necessarily tender. That does not happen now.

15,428. British Companies in India certainly, but Lord Salisbury's point rather was British Companies in Great Britain?—I did not take it to be so.

*Marquess of Salisbury.*] I did not mean that; I meant British Companies in India.

*Sir Austen Chamberlain.*

15,429. To get your position clear. Secretary of State, as I understand, you do intend to prevent, and believe you have taken the proper measures to prevent, improper discrimination between two companies incorporated in India on any ground of race?—Yes.

15,430. But you would not treat it as an improper discrimination, as I understand your White Paper, if the Indian Government, to encourage the growth or creation of an industry in India, placed an order with a company, whether British or Indian, incorporated in India, and, impartially as between those two, but excluded companies established elsewhere, even though they were established in the United Kingdom?—Certainly I should not regard that as discrimination.

*Major Attlee.*

15,431. May I follow that question up? Would you regard it as discrimination if a Provincial Government restricted its tenders to companies operating in its own Province?—I think it must be a case that must be judged on its merits, but my un instructed view at the moment would be that it need not necessarily be discrimination any more than it is discrimination in the case of a great local authority here giving a preference to industry within its borders.

Mr. M. R. Jayaker.

15,432. Is the Secretary of State aware that at the present moment the policy of many Provincial Governments is to purchase their stores from manufactories established under their own supervision? For instance, the Punjab Government buys its stores from places which are under the direct supervision of the Punjab Government and in which those articles are manufactured?—I think that is so.

Dr. Shafa'at Ahmad Khan.

15,433. Other Provinces do the same, I think?—Yes; that is not the kind of discrimination that we are contemplating in these Proposals. That is something different.

Sir Akbar Hydari.

15,434. Then that would not be implied in making incorporation of companies Federal?—It all goes to show, Sir Akbar, that those cases must all be judged upon their merits, but, generally speaking, I can see no objection to a local government giving preference in certain cases to works of certain kinds. That is not the kind of discrimination that we are attempting to meet and to protect ourselves against in the Proposals.

Mr. M. R. Jayaker.

15,435. This is what you mean, Secretary of State, four lines below: "It is not intended to interfere with a freedom of contract"?—No, Mr. Jayaker, that is a somewhat different point. For instance, people coming into a partnership, or drawing up Articles of Association; it is all that category of cases that we have in mind there.

15,436. You do not mean to refer to the freedom of contract of a Provincial Government to enter into a contract with a manufacturing company on such terms as the Provincial Government likes. That would be included in it, would it not?—No. This was another category of cases that we had in mind.

Marquess of Reading.

15,437. I want to be clear, if I can, on the matter of so-called discrimination, which is to be permissive, that is to say, it applies only to companies incorporated

after there has been some law granting a bounty or a subsidy?—Yes.

15,438. As I understand what you propose here, the only exception to be made to your general rule against discrimination is that in regard to companies not yet incorporated in India, if they do become incorporated in India after the granting of the bounty and subsidy, and for the purpose of getting the benefit of that bounty or subsidy, then they may be made subject to these conditions, that is, putting it briefly, to the rupee capital, to the number of directors and also to facilities for training of Indians. Those are the only exceptions you make, are they not?—Yes, with this one reservation, the company need not necessarily become incorporated in India. The phrase we use is, "company trading in India."

15,439. Yes, but I thought one of the conditions was that it must be incorporated in India?—No, that is not so.

Sir Phiroze Sethna.] But if it is to get the benefit of any bounties.

Marquess of Reading.] If you look at the beginning of paragraph (2), where you are dealing with the conditions—?—It is for a new Company, Lord Reading.

15,440. I said so. I said a Company incorporated after the grant of a bounty or subsidy?—Yes, that is right.

15,441. That is what I was putting to you. Those three conditions apply?—Yes.

15,442. That, I understand, is only done for one purpose: that is to say, when in India there has been a grant of a bounty or subsidy which would apply to all Companies trading in India and incorporated in India, it is to prevent Companies coming and incorporating themselves in India for the purpose of getting a bounty or subsidy that these three conditions are imposed?—Yes.

15,443. I may remind you that that was the very question which was raised with the Manchester Chamber of Commerce and that was the question which was put to them, and they agreed that that was not unreasonable?—Yes, I was much interested in their answer; I was not surprised at it; but this, generally speaking, is the proposal that was made by the External Capital Committee, and

I think during the last two or three years in our discussions it has been generally accepted, anyhow by a great many people.

15,444. They gave these answers to Questions 15,270 and 15,271 quite definitely, that they did not regard it as unreasonable. The only other point that I wanted just to ask you about, because it is to some extent new, it this. It is with reference to ships and shipping. I do not want to go into it in any detail. The substance of your expansion of the meaning of the term "Discrimination" is so as to include ships and shipping and British sailors, from captains downwards, who are trading in those ships so as to give them protection. That is the object of it, is it not?—The object of it is not to include any new categories. We had always intended to include shipping, but the lawyers told me (I do not know whether Lord Reading will confirm their view) that a ship has a curious entity in the field of law; it is neither a person nor a Company, and you can do things with ships that you cannot do with people and Companies; therefore you must mention ships by name.

15,445. You have really only expanded the language for the purpose of making clear the interpretation that must be put upon it; it is nothing more than that?—Nothing more at all.

*Lord Rankeillour.*

15,446. Only one or two points, Secretary of State. In paragraph 5 you say: "It is intended that appropriate provisions should be inserted in the Constitution Act to the effect that a Convention to this end concluded between India and a Dominion would operate to make applicable to the citizens of that Dominion the provisions relating to British subjects domiciled in the United Kingdom." Am I right in supposing that by such a Convention between India and the Dominion these paragraphs already relating to the United Kingdom could be embodied as a whole, but neither with addition nor subtraction; they could not make the position of a Dominion more or less favourable than that of the United Kingdom?—I should not like to say that an agreement between India and a Dominion must

necessarily take exactly this form. We were anxious, however, to put in an enabling clause to show that we should welcome the accession of Dominions provided that India and the Dominions agree upon these lines. It is more in the nature of a pointer than a definite condition that they can only accede upon this or that explicit term.

15,447. But would it be possible to give the Dominion or to give the United Kingdom preferential treatment in such Conventions?—I can imagine that India might make different agreements with different Dominions; but what we were anxious to show was that this was the pattern agreement so far as reciprocity goes, in our view.

15,448. You will not suppose I am suggesting it as at all likely, but take a possible instance. Could they make a reciprocal agreement with the Irish Free State to the detriment of the United Kingdom?—We are not dealing, of course, with tariff questions now, and offhand I cannot think of what kind of agreement of that kind they could make. Lord Rankeillour, if you take the basis of the agreement between Great Britain and India, the basis of full reciprocity, I do not see how any Dominion could get a better agreement than that.

15,449. No. I do not want to argue the merits; I was upon the construction of it more or less. The words say that a Convention might operate to make applicable to the citizens of that Dominion the provisions relating to British subjects domiciled in the United Kingdom. Those words on the face of them might be construed as meaning those provisions and no more and no less?—They could not mean that; it is not intended to mean that. It might mean less, but I cannot contemplate it meaning more.

15,450. In fact those words would exclude its meaning more?—No, the words would exclude nothing, but I cannot conceive of any agreement that would mean more.

15,451. I do not want to pursue that further. Then I have got a little difficulty in construing sub-paragraph (vi) of paragraph (2). Sub-paragraph (vii) begins by saying that "The provisions indicated above will be subject to two

other forms of exception or qualification"; that is, among others, sub-paragraph (vi) will be subject to two forms of exception or qualification?—Yes.

15,452. Then when you come to paragraph (2) it reads as follows—I am leaving out words which are in a sentence in a bracket: "It is proposed that an Act, which, with a view to the encouragement of trade or industry in British India, authorises the payment of grants, bounties or subsidies out of public funds"; then it says: "may lawfully require"—then I leave out other words—"or compliance with such conditions as to the composition of the Board of Directors or as to the facilities to be given for training of Indians, as may be prescribed by the Act." Now what I want to know is whether, supposing a Bill or an Act prescribing such compliance is deemed by the Governor-General to be contrary to sub-paragraph (vi) above, which is going to prevail?—Sub-paragraph (vi) is unlimited.

15,453. Sub-paragraph (vi) is unlimited and will certainly prevail over these words about compliance, etc.?—Yes, it will.

15,454. The only other thing I want to ask is this: Having regard to the great complexity of this subject, would it be possible for the Secretary of State to bring up in a proper legal draft the provisions embodying these proposals, before the Committee reports?—I should not like to give the pledge offhand, but I will do my best.

Sir Joseph Nall.

15,455. Would you refer to sub-paragraph (iii)? I think you have made it clear that that reference to the British subject was to avoid discrimination against a Company which happened to have any British resident or person domiciled in Great Britain on its Board or as a shareholder. Under this sub-paragraph (iv) such a Company having one or more United Kingdom subjects associated with it would be regarded as complying with Indian law. Turning to paragraph (2) as an exception, is it not the case that the bounties and subsidies to which paragraph (2) refers would be withheld in the case of a new Company or could be withheld in the case of a new

Company which did have one or two United Kingdom persons on it?—Yes, that could be so.

15,456. Therefore that would be a discrimination?—Yes. We have drawn attention to the exception that it would mean.

15,457. I take it that this paragraph (2) is explaining what it meant by proposal 124?—Yes.

15,458. Is it unreasonable to suggest that proposal 124 does in fact open up a new channel to discrimination?—No, it does not; it goes on with the present system. There are Companies now in India—I can recall one, a Flying Company, that receives a subsidy and in which conditions of this kind do exist.

15,459. That no United Kingdom resident should be associated with it in any way?—I would not say that, but that the capital should be a Rupee capital; the Company should be incorporated in India; the Directors would be such-and-such, and so on, just exactly as we do here with the Imperial Airways Company.

15,460. I quite appreciate the intention as indicated just now in answer to Lord Reading, but do these words not in fact enable a discrimination to be drawn between two new Companies, one of which may be wholly Indian; the other may be Indian in general but may in fact include one or two United Kingdom residents?—(Sir Malcolm Hailey.) The intention is that as regards new Companies all that the Legislature would say is that in order to earn a bounty or a subsidy you should have a certain composition of capital that is to say, Rupee capital, and that your Directorate should be of a certain class. It would not extend to their being able to debar the Company from eligibility on the ground that they contain some proportion of British capital or a certain number of British Directors.

15,461. I appreciate that intention, but my point is that the Memorandum does not say so. Under the Memorandum paragraph (2) distinctly cancels the *inso facto* provision in paragraph 3, sub-paragraph (iv), so far as bounties are concerned in the case of new Companies. It may be a mistake, but I put it to



the Witness that as the Memorandum is drawn and as proposal 124 is drawn they do in fact enable that discrimination as to domicile or birth to be enacted hereafter?—(Sir Samuel Hoare.) They do, and we accept that; and the Manchester Chamber of Commerce accepted it last Friday.

Sir Joseph Nall.] With great respect, I do not think the Manchester Chamber of Commerce witnesses last Friday understood this discrimination which I am endeavouring to indicate is now possible.

Earl of Derby.] No, I do not think they did.

Sir Austen Chamberlain.

15,462. As I understand, Secretary of State, if it is the case of a new company incorporated, not doing business in India before the Subsidies Act passed, the Subsidies Act might say that to earn the subsidy not only must the capital be rupee capital and the company incorporated, be incorporated in India, but that every shareholder must be resident in India or domiciled in India, and every servant and director of the company domiciled in India?—Sir Austen's question was dealing only, was it not, with new companies after the Subsidies Act?

15,463. Yes?—As our proposals stand now, there could be discrimination of that kind.

Marquess of Reading.] Is that so? I am very anxious to understand it, because if it is it would make a very great difference. As I understood it, the only point of exception is as a condition of eligibility for the grant of subsidy or bounty, three conditions may be imposed, but none of those conditions imposes, first of all, that all the shareholders must be Indian; so far as I have understood, although I agree that there is no provision as regards the number of directors, I have always understood hitherto that the provision has been with regard to the number of directors a reasonable number, and certainly has never been held to include all the directors. I agree there is no condition of that kind. I thought it was going to be cleared up.

Sir Joseph Nall.] Would Lord Reading allow me to put it in this way?—The *ipso facto* provision in paragraph (3), sub-paragraph (iv), relates to the birth, colour, creed, and so on, of an individual. Paragraph (2) at the bottom of page 5 says that that shall not apply in the case of bounties to new companies.

Marquess of Reading.] I do not understand it to.

Sir Joseph Nall.] Or it need not apply.

Marquess of Reading.] I do not understand it so, because, if you look, the provision that we were referring to about the *ipso facto* provision is in the case of a company which is or may hereafter be incorporated in India, so, *prima facie*, it would apply to that. Then, of course, you get to what we call the exception clause; that is the one relating to the grant of bounties and subsidies, but the only provision with regard to that is as to the condition of eligibility for a grant, bounty or subsidy. To that extent it is an exception.

Sir Austen Chamberlain.] That exception is that all the directors are Indian and all the shareholders are Indian.

Marquess of Reading.] From the time this has been introduced there has been no question of all the shareholders being Indian.

Witness.] What we have in mind are the recommendations of the External Capital Committee which reported in 1925. I could have copies of it circulated to members of the Committee; but, if they will refer to it, they will find, on page 16, that these are the conditions that were recommended by the Committee, and these are the conditions we ourselves have in mind: (1) Reasonable facilities to be granted for the trading of Indians; (2) in the case of a public company that it should be formed and registered under the Indian Companies Act; (3) that it has a share capital, the amount of which is expressed in the Memorandum of Association in rupees; and (4) that such proportion of the Directors as Government may prescribe consist of Indians.

Sir Austen Chamberlain.

15,464. The Secretary of State will observe that he has omitted the qualifying

adjective "reasonable". from before "facilities." It may be only an oversight; and that there is nothing to say a proportion of the Board of Directors. He says they may make what rules they like about the composition of the Board of Directors?—Yes; I think that may be an error in drafting. In any case, Sir Austen will see that these conditions are not conditions in the air, but they must be specifically prescribed in the actual Subsidies Act.

15,465. Yes. I have been very much alarmed about the possible abuse of these subsidies in consequence of certain questions put in the proceedings before this Committee; and therefore I think it is very necessary that the Government should express their meaning precisely; and that we should have, if we can, the exact terms in which they mean to grant this liberty?—I will certainly take note of what Sir Austen has just said.

Sir Joseph Nall.

15,466. I do not want to prolong the proceedings; but I do want to ask the Secretary of State, finally, this: If (iii) and (iv) definitely mean that a person born or domiciled in this country is, for the purpose of the new company mentioned in sub-paragraph (iv) definitely to be regarded as complying with a provision relating to Indians, then it would seem that that (iv) *ipso facto* provision definitely has cancelled this sub-paragraph which says: "The provisions indicated above will be subject to two other forms of exception or qualification." one of which is that in relation to exceptions in regard to bounties and subsidies the provisions of sub-paragraph (iv) shall not apply. I do not want to pursue it, but I hope the Secretary of State will be good enough further to review this Memorandum, as apparently the intention of the Report he has just read to the Committee is not, in fact, referred to or embodied in the Memorandum?—We might make a reference to the Report of the Committee perhaps before we settle it.

Mr. M. R. Jayaker.

15,467. May I ask the Secretary of State whether the *ipso facto* clause by its terms means that it is subject to the

special provision as regards bounties and subsidies?—Exactly; that is what I have said.

Sir Reginald Craddock.

15,468. There is only one point I would like to put to the Secretary of State, because I do not quite understand what is covered exactly. I will ask him to look at paragraph 3, sub-paragraph (ii) (b) of the Memorandum. Hitherto the discussion has been chiefly on the effect of the bounties clause, but at the present moment, or when this Constitution Act is passed, will it be possible for the Indian Government to require the companies incorporated in the United Kingdom, sterling companies, to convert themselves into rupee companies? There are many sterling companies in England now who are trading in India in one form or another. Will it be possible for them to be required to convert their capital from sterling into rupees?—No: and I cannot see, even if the Federal Government wished to do that, how they could do it. If Sir Reginald Craddock will look at sub-paragraph (iii) he will see that any attempt of that kind would be *ultra vires*.

15,469. Would it be a statutory disability based upon domicile because an Indian Company incorporated in India would have rupee capital as a matter of course?—Anyhow. I think it is thoroughly well covered in the Memorandum. If it is not, it would be certainly covered in any Act of Parliament.

Miss Pickford.

15,470. If in any future Subsidies Act which would lay down certain conditions such as are outlined both in the Memorandum and in the White Paper, supposing one of those conditions were that all the directors had to be of Indian nationality, would not then that Act be in itself discriminatory?—I think it might be. It would depend upon the provisions in the Act. If it were, of course nothing derogates from the power of the Governor-General and the Governor to intervene in their field of special responsibilities.

15,471. Therefore, if it were held to be discriminatory, all the other protections as to discriminatory legislation would at once apply?—Yes.

Marquess of Salisbury.

15,472. I only want to ask the Secretary of State this question. He and I agreed how very complicated this matter was at the beginning. I am sure the Committee, if I may say so, would very much appreciate it if he could let us have the actual draft of the sort of clauses he contemplates—the bounty clauses, Lord Ránkeillour has already suggested it to him?—Lord Ránkeillour asked me a similar question, and I said that at some time or other I would certainly try to do so. I could not do it offhand.

15,473. Perhaps you would consider that, would you?—Certainly.

Sir John Wardlaw-Milne.

15,474. The questions I specially wanted to ask the Secretary of State are those which have been partly put by Sir Joseph Nall, and I understand that Sir Samuel is going to reconsider Clause (2), in which case I will not pursue that matter any further?—Yes; but do not let us talk about a clause here. We are dealing with a Memorandum, and I should like to make it quite clear that what we are trying to do in the Memorandum is not to set out a series of clauses of an Act of Parliament, but to show the Committee our intentions. Those being our intentions, we should then hope to put them into statutory form in due course.

15,475. I am sorry; I used the wrong word when I said "clause." If you are going to reconsider that question of directors and reasonable facilities, I do not want to carry the matter any further. I wanted, however, Secretary of State, to ask you a question regarding the reciprocal part of the Memorandum which is contained in sub-paragraph (v). I do not desire to raise any objection to it, except to ask you whether you have considered in exactly this form it is actually equal in its effect. For example, what is in my mind is this: Is it not possible that in this country it might be necessary, say, in the case of companies which make armaments, to stipulate that such companies making armaments, and at the same time perhaps making other kinds of steel or iron work, might have to be British companies domiciled in this country?—That would be a natural condition,

I suggest, to set up; but is it not possible that India might say that these companies, because this exists in Great Britain, should be barred from tendering for ordinary materials in India? I do not know whether it has occurred to you, but it seems to me there is a possible loophole there. I only suggest it?—I will take note of what Sir John Wardlaw-Milne has just said. I think it is a point my advisers have had in mind. It is not new to me, but I will keep it in mind.

15,476. I only ask for information, because I regret to say I am very ignorant about it, but I take it paragraph 5 is an entirely new proposal as regards the position between India and the Dominions?—Which paragraph?

15,477. I do not refer to immigrants from the Dominions so much as to the position of Dominion Companies, or companies trading with India domiciled in the Dominions. As I understand this, in future whether they will be allowed to engage in the trade of India will entirely depend upon the agreement between the Dominions and India?—The Dominions, of course, are equally entitled with any British Nationals to the general protection against discrimination and disability. In the case, however, in which Great Britain, from the fact of its long association with India is receiving for itself reciprocal treatment with India there we felt that it was a matter of negotiation between the Dominions and the Government of India as to whether they should receive the additional advantages of reciprocity or not. It is therefore for the Dominions to negotiate agreements with India either upon the lines upon which we are making this agreement or upon other lines.

15,478. But in each case, it would have to be a separate agreement?—Yes.

Mr. M. R. Jayaker.

15,479. May I point out that what you are doing in that part of the memorandum is in complete accord with the Report of the Second Round Table Conference at page 57?—That is so.

15,480. Where it is stated: "It will be for the future Indian Legislature to

decide whether and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or companies registered there, subject, of course, to similar rights being accorded to residents in India and to Indian Companies." You are nowhere departing from what was at one time the understanding at the Round Table Conference?—That is so.

Mr. *Zafulla Khan*.] Except in one particular to which attention will be drawn?

Sir *John Wardlaw-Milne*.

15,481. I am not suggesting you are departing in any way from the Round Table Conference, but I was particularly interested in what was to be the position of the Dominions; and the Round Table Conference, if I may say so, with great respect, does not perhaps affect their views of the matter. I only wanted to know whether this was a new proposal?—I do not want to be pedantic about words. It is not a completely new proposal; it is a proposal that we have discussed a good deal within the last two or three years.

15,482. On paragraph 6, you mention a difficulty of which you give an illustration at the end, about prescribing additional qualifications for new entrants to professions; but does not the word "qualification" really cover your difficulty? If qualifications could be established, the fact of a local knowledge of some sort being required, whatever the profession, would operate equally with anybody who applied, would it not? The qualification clause appears to me to cover it?—The point in our mind was this: In certain cases, the British qualification would not be sufficient in itself. Take, for instance, the case of an accountant. It might be necessary for an accountant to have a certain knowledge of Indian Company Law. It would also be necessary for a pilot to have, not only a knowledge of seamanship, but also a knowledge of the tidal waters in which he was acting. It might also be necessary for a Mines Manager to have a knowledge of the Indian Mining Legislation. It is cases of that kind that we have in mind.

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Sir *John Wardlaw-Milne*.] I thought perhaps the basic qualification would cover all applicants and the rest would follow, but I do not press it. I see your difficulty.

Marquess of *Reading*.

15,483. May I ask a question upon that? I notice the words are very wide in paragraph 6, the paragraph to which Sir *John Wardlaw-Milne* has called attention. "It is clearly reasonable that India should be in a position to require additional qualifications from new entrants to professions which are justified by the special needs of Indian conditions." Does that language apply to the Bar? The language is wide enough to cover it?—As Lord *Reading* knows, the position with regard to the Bar, I think, is that no English barrister has the right to practise in India at all. He has first to be made an advocate and then he has to get certain other qualifications?—(Sir *Malcolm Hailey*.) The High Courts merely admit barristers as advocates who comply with certain conditions such as having studied in chambers. They do that under their own powers.

15,484. That applies to all Members of the Bar, or the Legal Profession. It is not especially applicable to the English Bar?—(Sir *Samuel Hoare*.) It does exactly what we have in mind here; it adds something to an English qualification.

15,485. It is not intended to do more than that; there have been questions discussed at considerable length about that?—I do not follow how that differs from the cases I have just given about the pilots and accountants, and so on. In each case, something more is required in India than would qualify the particular professional man here.

Lt.-Col. Sir *H. Gidney*.

15,486. It is not so in Medicine?—I was dealing with cases like those I mentioned.

Sir *Hubert Carr*.

15,487. Might I put a further question to the Secretary of State on that because it is of such tremendous importance to the British professional man in India,

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and it seems to me, in regard to the additional qualifications, that what we should object to would be if Indian qualifications had to be gained when British qualifications had been granted for identical purposes?—I could not quite hear.

15,488. If Indian qualifications had to be gained for the identical purpose for which British qualifications had been granted?—Yes.

15,489. May I illustrate it?—The Memorandum takes pilots. To enter the pilot service, one requires a qualification from the Board of Trade?—Yes.

15,490. In addition they have to serve as leadsmen and gain their experience and become fully qualified pilots before they can handle a vessel. What we wished to guard against was that the Board of Trade original certificate which qualified them for the Pilot Service should not be accepted in India, but that some future Legislature might say: "Only those who hold an Indian Board of Trade Certificate shall be qualified for the Pilot Service?"—The practical difficulty is to find accurate language with which to carry out Sir Hubert Carr's intention. If he could help us in the way of finding a formula we should be very much obliged. What we have in mind is not the kind of discrimination, an example of which he has just mentioned, but the permission to the Indian Government to impose the additional necessary qualifications of which I have just ventured to give some examples.

Sir John Wardlaw-Milne.] That is why I ventured to use the words "basic qualifications."

Sir Hubert Carr.] We do not want to have to duplicate them in India if they have been gained in England.

Lt.-Col. Sir H. Gidney.] I speak subject to correction, but I believe I am correct in stating that at present the only certificate accepted by the Pilot Service in India and Burma is the Board of Trade Certificate in London and nothing else.

Mr. Zafrulla Khan.] What we are discussing is what may happen in the future.

Dr. Shafa'at Ahmad Khan.

15,491. It may be necessary to have additional qualifications?—I think that may be so.

Lient.-Colonel Sir H. Gidney.

15,492. To follow up Sir Hubert Carr's question you come later on to reciprocity in examination?—I do not quite follow that point.

Sir Hubert Carr.] I have further questions on the professions when my turn comes.

Chairman.] I do not know whether you wish to go any further in that matter now?

Sir Hubert Carr.] No, not until my turn comes.

Mr. Morgan Jones.

15,493. May I ask you one general question in regard to these provisos, Secretary of State? Is there any precedent for these in connection with the Constitution Acts applied to other parts of the Dominions?—Offhand I could not say whether there was or there was not I would imagine there was not, and I would say the reason why we include them in an Indian Constitution Act is due to the nature of the partnership between British and Indian trade over many years. The position is quite different as compared with that of any other Dominion, if you take the great British interests that have been created during the last 150 years.

15,494. As I see it, Sir Samuel, you provide in respect of two forms of taxation. You provide against taxation generally and against discriminatory taxation. Let me leave discriminatory taxation alone for the moment. Will you turn to paragraph 3? It is only discriminatory taxation.

15,495. Then perhaps I am entirely wrong in my reading of the position. If you look at paragraph 3, you will find in (ii) (b) (I will read the superscription first): "As regards British subjects domiciled in the United Kingdom in so far as they are not covered by Clause (i) it is intended subject to what is said in Clause (v) . . . . (b) to provide a special form of protection for British subjects domiciled in the United

Kingdom, in respect of the following matters", and then follows the matters, and the first matter is taxation. Then you define taxation, "Taxation" (we are told) "is intended to cover imposts of all kinds, including, for example, rates and cesses." Am I right in supposing that that means that a Britisher carrying on business in India but not domiciled in India is exempted in respect of taxation?—No.

15,496. I am glad to hear it?—No such luck for him. If Mr. Morgan Jones will look at the limiting words at the end of the Clause, he will see "against statutory disabilities based upon domicile, residence, duration of residence, language, race, religion or place of birth." That restricts the field of taxation.

15,497. I may have misread it?—It simply means you cannot tax a man in those respects more because he is a Britisher.

15,498. If that is the explanation I am very much obliged, but I confess I have read it over and over again, and that is the impression I got from it?—I am afraid that is perhaps inevitable in a Memorandum covering a wide field, but it is definitely our intention that it should be entirely restricted to the field that I have just described to Mr. Morgan Jones.

15,499. Thank you very much. That removes that point. On the point of discriminatory taxation, might I put a proposition like this to you, Sir Samuel? There are at this moment preferential rates given to British traders by the Indian Government. Is it not true that as a result of Ottawa, certain preferences were given? Is not that so?—Yes.

15,500. Suppose a future Indian Government came to the conclusion that it would be in the interests of India to have a system of complete free trade, that would mean doing away with the Imperial Preferences, would it not?—I am quite ready to go on with Mr. Morgan Jones with these questions and answers, but we did agree at the beginning of to-day's proceedings (I am not sure whether he was in the room at the time) that we would leave tariff questions to a separate discussion. Subject to what he may say, I think that

that would be the better course because there are a number of issues connected with the tariff question, of which these are some.

15,501. If the Secretary of State thinks that is a more convenient course, I will be glad to leave it. It is my fault, I dare say, but I really failed to understand the answer given to Lord Rankeillour a few moments ago. I do not quite understand the exact meaning of that last sentence in paragraph 5. As I understand it (I am giving my interpretation of it) it is open to the future Indian Government to arrive at a Convention with, shall we say, the Canadian Government in regard to their respective subjects?—Yes.

15,502. What is the effect of that last sentence upon such an agreement or Convention?—None, I would say.

15,503. What is the meaning of the words?—The meaning of it is that it is a means, more than anything else, of drawing the attention of India and the Dominions Governments to the advantage of making agreements of this kind, but we tie neither the Dominions Governments to attempt to make the agreement, nor do we tie the Government of India to make the agreement if the offer is made; it is simply an enabling proviso, and it may be that, having no statutory force, the reasons against putting it into an Act of Parliament are greater than the reasons for including it. There is something, however, to be said for putting it in, to show that we are contemplating the picture of the future as an Imperial picture, and that we are not ignoring the point of view of the Dominions.

15,504. Supposing the effect of such a Convention were to place the citizens of Canada, shall we say, in a position less favourable than the position of the citizens of this country. Does not the last sentence mean that in spite of that they will be entitled to the same provisions as relate to British subjects domiciled in the United Kingdom?—No. I would say that it does not mean that, but if there is any uncertainty about it, we will make it quite clear in any future draft that it does not mean that.

Mr. Morgan Jones.] Then I will not press that.

*Lord Rankeillour.*

15,505. On this, Secretary of State, do I understand from what you have now said that this is really a superfluous provision? You spoke of it as a pointer. Could they make such a convention without this provision?—Yes, I think they could; but I am not sure that I would use the word “superfluous”, because I did say there was an advantage in a clause of this kind in drawing attention to the Dominion position. Importance is attached to it by a good many people.

*Marquess of Reading.*

15,506. Would not the effect, Sir Samuel, be that, assuming they did enter into agreement which, substantially, was to the same effect as provided in the Constitution under these clauses, those provisions of the Constitution would be made applicable to them?—Yes.

15,507. It depends entirely upon their coming to an agreement?—Yes.

15,508. If they arrive at an agreement, they get the benefit of the statutory provisions in the convention?—That is exactly so.

*Mr. Morgan Jones.*

15,509. And, if they do not arrive at a convention, what is their position? Do you protect a citizen of the Empire outside the United Kingdom?—We protect the citizens of the Empire under the general protection of Clause 122; but we cannot guarantee to a citizen of the Empire the special advantages that arise out of a treaty of reciprocity.

15,510. So that actually (forgive me again if I am wrong) the effect of these provisos is, first and foremost and, indeed, simply, to protect the citizens of the United Kingdom?—Yes, that is so.

15,511. And it is a matter for the citizens of Canada and Australia to fend for themselves?—Yes; upon this field. I have said already that they get the general protection under Clause 122, namely, that there can be no disability or discrimination imposed upon any subject of the Crown.

*Dr. Shafa'at Ahmad Khan.*

15,512. But it does not apply to those companies or persons which are at the present time operating in India?—No.

15,513. It only applies to future companies or person?—Yes.

*Sir Austen Chamberlain.*

15,514. Secretary of State, you provide that people domiciled in this country shall have a right of free entry in India, subject to ordinary treatment?—Yes.

15,515. You do not mean to say that your clause is wide enough to give free entry to India to the citizens of a Dominion which refuses free entry to Indians in that Dominion?—Sir Austen has put in the form of a question exactly what is in my mind and exactly what is the justification for drawing this distinction between British Nationals of the United Kingdom and Nationals of the Dominions.

*Major Atlee.*

15,516. Just one further question upon that. I am clear now as to the position with regard to the United Kingdom and the Dominions. How about the other parts of the Empire? There is no unrestricted entrance, is there, for people from other parts of the Empire, say, Kenya, for instance?—The protection is purely to the United Kingdom.

*Sir John Wardlaw-Milne.]* Purely?

*Major Atlee.*

15,517. Therefore I take it that it would be open to the Government of India to enter into negotiations, let us say, with any of the East African Colonies, and to make reciprocal agreements, presumably, through the Colonial Office in the same way as they do with the Dominions?—As Major Atlee says, through the Colonial Office.

*Archbishop of Canterbury.]* It would appear that they could not do it except through the Colonial Office in this country.

*Major Atlee.]* Quite.

*Marquess of Reading.]* Except by permission of the Secretary of State.

*Sir Austen Chamberlain.*

15,518. Secretary of State, I want to come back to the question of subsidies and the exceptions in regard to bounties and subsidies. The purpose of the exception is set out in the second line. The purpose is the encouragement of trade or industry in British India? I am quoting from Paragraph (2) of your Memorandum?—Yes.

15,519. Will you explain to me, that being the purpose, why you distinguish between existing companies and future companies? "For the encouragement of trade or industry in British India." I can quite understand that they must have the right to give a subsidy to a trader or company established in India and manufacturing there, for instance, and to refuse to another British trader who is manufacturing outside India; but why is it necessary on the ground of the date of their incorporation to distinguish between two British companies both manufacturing in India, or between an Indian company and a British company both manufacturing in India?—We have felt that a distinction ought to be made, for this reason, that existing companies have been working along existing lines for many generations, and that therefore you have got to be extremely careful in altering the conditions under which they are operating. It seemed to us therefore to be the fair thing to go to make the change when the Act is actually passed. A period of time elapses; they have warning of the new conditions; and it cannot be said that, having operated in India perhaps for many generations on certain lines, those lines have suddenly to be changed.

15,520. I am afraid I did not make my meaning clear. You would encourage industry in India by saying, "We will give a subsidy from a future date to one class of firm that manufactures in India but not to another class of firm that manufactures in India?"—I think Sir Austen will see that we have to take two sides of the picture into account: on the one hand the encouragement of Indian industry, and on the other hand the obligations, direct or indirect, that have grown up as a result of British companies operating in India for many generations.

15,521. I am not questioning the protection which you are affording to existing companies, but what I am putting to you is that if you say a subsidy may be given to Indian companies, that is to say with Indian shareholders only, to new companies only if they are Indian and not if they are British, even though both manufacture in India and increase trade and employment, you are making a distinction which does not bear out the purpose of your preamble?—We feel in the matter of subsidies the future Government of India must have a certain latitude. So far as I know, every Government in the world which has ever given any subsidies at all has made conditions of this kind. For instance, we ourselves have made almost exactly similar conditions in the case of a company that I was instrumental in forming at the Air Ministry, namely, Imperial Airways; there we make conditions about British eligibility and so on. I think it would be very greatly restricting the action of an Indian Government in the future if you tied its hand so tightly as really to give it little or no latitude in saying how its money should be spent. After all, the Government is voting money for this purpose.

*Mr. M. R. Jayaker.*

15,522. Is it not a fact, Sir Samuel, that at the present moment the Indian Legislature has the right of attaching these conditions even when giving bounties to an existing Company?—That is so.

*Sir John Wardlaw-Milne.*

15,523. Would Sir Austen allow me to ask a supplementary question? Is it not the case that all you are asking the British company to do is that if it wants the subsidy it must in fact establish a subsidiary company in India complying with the conditions that would apply to any Indian company that gets that subsidy?—That is the way it might work out.

*Sir Austen Chamberlain.*] What exactly does that mean? The subsidiary Company may have the necessary conditions with which it is to comply: (1) that it should be incorporated in India, (2) that its capital should be stated in rupees, and (3) that its Board of



Directors should consist entirely of Indians.

*Marquess of Reading.*] There is no such provision.

*Sir Austen Chamberlain.*

15,524. I do not say there has been such a provision, but I say that so far as this Memorandum which you have laid before us goes there is nothing to prevent that being made a condition?—I thought I had made it clear that what we intended was to act upon the lines of the Report of the Committee that I quoted earlier this afternoon.

15,525. I will put one final question. Is there no danger that the result of this provision, expressed as you have expressed it, may be to create a monopoly for existing Indian and British firms or Companies and prevent a new Company from starting? Take shipping: Would not this mean that no new British Shipping Company could ever get into the India trade if there was a subsidy attached?—No. Surely Sir Austen is really, if I may say so without offence, greatly magnifying this question. We are dealing only with Companies to which subsidies are given.

*Sir Austen Chamberlain.*] There is nothing more likely to draw a subsidy, I should have thought, than shipping; at any rate there is no trade in the world generally which is probably more subsidised to-day, is there? I do not want to exaggerate, but if you can show that I am exaggerating I shall be very happy.

*Marquess of Reading.*] May I suggest that all that would have to be done would be to form a subsidiary Company complying with the conditions, as is done now.

*Sir Austen Chamberlain.*

15,526. I do not know how that would apply to this?—But surely is not Lord Reading right? In a case of that kind it will be possible for a British Company to form an Indian subsidiary Company and to conform to those conditions. For instance, I am reminded (I had forgotten it until Sir Malcolm Hailey reminded me of it) that it is exactly what has happened in the last few weeks with Imperial Airways and the Indian Flying Company.

*Mr. Zafrulla Khan.*

15,527. Secretary of State, you have explained that except for the general provision in paragraph 3 (i) the subsequent provisions are based more or less upon a question of reciprocity and are confined to persons, British subjects domiciled in the United Kingdom or British Companies incorporated in the United Kingdom or in India?—Yes.

15,528. But that paragraph 3, sub-paragraph (i), gives to the extent to which it goes general protection to all British subjects. Can you give any reason why this is not also based upon reciprocity and why it has been necessary to give this protection to British subjects domiciled in the Colonies or British subjects in the Dominions, whereas Indians admittedly do not enjoy these rights in the Dominions and the Colonies?—We have felt that this has always been one of the principles of Indian administration since the proclamation of 1858; beginning with 1833, then Queen Victoria's Proclamation in 1858, then the repetition of the Pledge in the Act of 1919, and we do feel that it would be a very retrograde step now to go back upon a consistent line of policy of that kind that has always been in operation.

15,529. Is there not this factor that, so far as the United Kingdom itself is concerned, British subjects from India are given the same rights which are given to British subjects domiciled in the United Kingdom when they go to India, and that therefore Her Majesty's Proclamation and other such general declarations did establish a certain amount of reciprocity, almost complete reciprocity, between India and the United Kingdom and that the same hope has not been realised with the rest of the Empire. You are making distinctions between India and the Dominions in other matters. Is there any real reason why that distinction should not apply over the whole field?—That is the answer I have just given, namely, that it would be contrary to all our policy now for a whole century.

*Mr. Zafrulla Khan.*] Very good. Is it consistent with your policy that in the future a British Indian subject should not be eligible for appointment,

let us say, to the Civil Service in Ceylon, but that a British Subject in Ceylon should be eligible for appointment to the Civil Service in India.

Sir Phiroze Sethna.] And that is so to-day.

Sir Hari Singh Gour.

15,530. That is a fact to-day?—I would like to think about the reactions of that question. I do not off-hand know what is the position in Ceylon as regards the Civil Service; I would like to look into that, but, generally speaking, I should say, that apart from the general declaration, there ought to be an opportunity for India to make reciprocal agreements with the Dominions.

Mr. Zafrulla Khan.

15,531. That we accept, but paragraph 3 (i) would make it impossible for the Legislature or the Government of India to impose restrictions of the kind on British subjects from the Dominions and the Colonies which are imposed upon British subjects from India when they go to those Colonies and the Dominions?—I should have thought there the Government of India would have an opportunity of negotiating an agreement about questions of that kind. They have got, after all, a very strong lever in their power to refuse the right of entry.

15,532. May I put a specific point on that to you? Supposing you in England here recruited a South African British subject into the Indian Civil Service would it be open to the Legislature in India to pass a piece of Legislation which would stop his entry into British India?—I should not like to give an answer about a very *ad hoc* or *ad hominem* act of that kind, but would say certainly it would be possible for India to refuse the right of entry of the nationals of a Dominion.

15,533. Would not then this general provision under paragraph 3 (i) force the new Indian Legislature at the earliest possible moment to restrict or stop the right of entry in order that if the right of entry were left open these rights in paragraph 3 (i) should not be unrestrictedly open to British subjects from the Dominions once they have entered India because they are not open

to British Indians when they go to those Dominions. Would not you be forcing the Legislature to apply the greater restriction to begin with so that the smaller privileges that you want to confer should be kept out?—I do not think so, but it is a matter of opinion, and I do not see in any case a better way of dealing with the position.

15,534. You are aware of the position of British Indian subjects in South Africa in the matter of professions, trades and callings, are you not?—Yes.

15,535. Do you think either public opinion in India or the Indian Legislature is likely to view with equanimity a provision which compels them to give equal opportunities with their own nationals and British subjects domiciled in the United Kingdom, with regard to professions, trades and callings, to British subjects from South Africa?—I should still say that even if that were the case, I should not be in favour of going back upon the policy of the last 100 years, and starting within India itself a system of discrimination against particular nationals of the British Empire. I think a step like that would be a retrograde step.

15,536. But do you think that is consistent, or, rather, that what has happened in the past is consistent, that the Secretary of State for India has not insisted on, or, if he has insisted, he has not been successful in his efforts to obtain, equal treatment for Indians in the Dominions, and that he should, as the result either of his neglect or his failure to succeed in his efforts now insist that the present most inequitable position should be perpetuated by Statute?—I would not accept the stricture upon my predecessors. I would say that it had been a part of British and Indian policy in India over this century not to draw distinctions in India itself between one national of the British Empire and another, and it is upon that ground that I stand in making this proposal.

15,537. However restrictive might be the legislation or regulations in the Dominions themselves against India?—I would say in that case it is a matter for negotiation, always keeping in mind the fact that India retains this very powerful instrument of negotiation.

namely, the right to withhold the power of entry.

15,538. You would lay no restriction whatsoever upon the right of India to legislate, barring the right of entry, if they chose to do so, barring the right of entry of British subjects who were domiciled in the Dominions and the Colonies?—I am sorry. I did not follow exactly Mr. Zafrulla Khan's question. Will you repeat it?

15,539. My suggestion is this, that you do not propose any kind of restriction upon the power of the Indian Legislature to pass legislation barring the right of entry of British subjects domiciled in the Dominions or the Colonies?—They have a free right to do that under these proposals.

Mr. Zafrulla Khan.] No sort of restriction is required.

Sir Hari Singh Gour. . .

15,540. One such Act was passed in 1924?—I am not now dealing with the exceptional case of Police Cases and undesirable cases and so on.

Mr. Zafrulla Khan.] No. I suppose I must accept the position that any Legislature must, if they want to stop the smaller rights in paragraph 3 (i), altogether bar entry if they desire to do so.

Sir Manubhai N. Mehta.

15,541. Secretary of State, am I right in understanding that paragraph 122 will not have any effect of depriving Indian States' subjects of the protection against discrimination which they at present enjoy?—It does not touch Indian States' subjects at all.

15,542. The language is "The Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting in British India any British subject." So can they subject any Indian States' subject to such discrimination?—You mean the Federal Government discriminating against the subjects of an Indian State.

Sir Manubhai N. Mehta.] Which at present they do not do.

Mr. N. M. Joshi.] What about the power? The present Government has the power.

Sir Manubhai N. Mehta.

15,543. That is what I want to ask?—It is certainly not intended that there should be any discrimination of that kind. In any case, the discrimination would have to be made by the Federal Government in which, of course, the Indian States would be strongly represented, and by a Federal Legislature in which also the Indian States would be strongly represented.

Mr. N. M. Joshi.

15,544. May I ask you, Secretary of State, in this connection, whether in the Treaties of Accession a Clause that British Indian subjects will not be discriminated against in Indian States will be found?—That will not be found in the treaty of Accession.

15,545. Where can we then secure rights of reciprocity in this matter in the Indian States?—Mr. Joshi is raising quite a new issue. We are not attempting to obtain those rights of reciprocity because we felt it would be a mistake and would be also, what is even more serious sometimes than a mistake, a waste of time to try to impose conditions of that kind upon the Indian States.

Sir Abdur Rahim.

15,546. Secretary of State, I simply want information upon one point if you can give it me. Are there any Indian Companies with Indian capital and directors trading in Britain?—I could not say off-hand. I could find out and let Sir Abdur know.

15,547. Do many Indian Companies like that have offices of their own here?—There must be several; how many, I cannot say.

15,548. Will you kindly let me know?—If the statistics are available we will get them.

Sir Hari Singh Gour.

15,549. You said just now, Secretary of State, that you are pursuing a policy of the Government carried on during the last 100 years giving all British subjects equal rights as regards the elementary right of citizenship, namely, the right to enter and live in British India?—Not the right to enter, no.

Sir Hari Singh Gour.] The right of residence.

Mr. Zafrulla Khan.

15,550. No ; holding public office, pursuing a profession, trade or calling ?—It is all set out in the memorandum and in the Government of India Act too. It is Section 96 of the Government of India Act.

Sir Hari Singh Gour.

15,551. Has this practice been observed when they were mere dependencies or more colonies of Great Britain ?—I do not know ; I could not say off-hand.

15,552. Is it not a fact that the restriction to the right of entry was for the first time recognised and enunciated in the Imperial Conference, that it is the right of the Dominions, including India, to control its own population by restricting the right of entry ?—I do not know whether that is so or not. In any case, it has been the practice in India for a long time.

15,553. The position to which we are relegated is this. In a place in South Africa, or, let us say, Kenya. Indians, although they have been resident there and have been resident for three or four generations, may be debarred by reason

of their colour, caste, descent, or religion from holding certain offices or from following certain trades or professions. But India has not got the right of retaliating against the offending Dominion to that extent by prescribing similarly that as the Indians suffer from certain disqualifications, say, in South Africa or Kenya, the Nationals of South Africa or Kenya, whether resident in India or not, or rather whether domiciled or resident in India, shall also suffer from the same disqualification ?—I am very well aware that India feels great grievance upon these points, and without saying anything indiscreet, from time to time I sympathise with them.

15,554. And would you not help India by strengthening her hands and by giving her full right of reciprocity to which she is entitled ?—We have come to the view that the way to draw a distinction is to give power to withhold the right of entry ; that is our view. We evidently think that some distinction ought to be drawn, and so far we have taken the view that that is the wisest way to do it.

Chairman.] I propose to adjourn now till half-past 10 to-morrow morning, when, according to our arrangements, the Secretary of State will continue to give evidence upon Commercial Discrimination.

*(The Witnesses are directed to withdraw.)*

Ordered, That the Committee be adjourned to to-morrow, 10.30 o'clock.

7th November 1933.

Present :

Lord Archbishop of Canterbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Middleton.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutcheson of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Sir Reginald Cradlock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.  
Earl Winterton.

The following Indian Delegates were also present :—

# INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

# BRITISH INDIAN REPRESENTATIVES.

His Highness the Aga Khan.  
Dr B. R. Ambedkar.  
Sir Hubert Carr.  
Mr. A. H. Ghuznavi.  
Lieut.-Colonel Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.

Mr. N. M. Joshi.  
Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Mr. Zafrulla Khan.

The MARQUESS OF LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :—

Sir Hari Singh Gour.

15,555. Yesterday, my Lord, I drew the attention of the Secretary of State to a resolution of the Imperial Conference. The resolution is No. XXII of the Imperial War Conference, 1917, and it was implemented by resolution No. XXI of the Imperial War Conference of 1918 in which the following words occur. "The Imperial War Conference" (it is dated 24th July, 1918, on page 195 of the Proceedings of the Conference) "is of the opinion that effect should now be given to the principle of reciprocity approved by Resolution XXII of the Imperial War Conference, 1917. In pursuance of that Resolution, it is agreed that : It is an inherent function of the Governments of the several Communities of the British Commonwealth, including India, that each should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities." Then follow certain rules regarding the visit of visitors for temporary purposes. Then I draw the attention of the Secretary of State to the last paragraph, paragraph 4 : "The Conference recommends the other questions covered by the memoranda presented this year and last year to the Conference by the representatives of India in so far as not dealt with in the foregoing paragraphs of this Resolution to the various Governments concerned.

with a view to early consideration." I wish to ask the Secretary of State whether effect has been given to this Resolution, paragraph 4 of the Conference of 1918, placing India *vis-a-vis* the other Dominions of the British Commonwealth, including the United Kingdom, in the same position as the United Kingdom stands to India ; in other words to establish a complete right of reciprocity between India and the other units of the British Commonwealth ?—(Sir Samuel Hoare.) The position is, as Sir Hari Singh Gour shows. It is the position we were discussing yesterday. As to what the other Governments have done other than the Government of India, I do not know.

15,556. The position that we discussed yesterday amounted to this, that while the other self-governing Dominions of the British Commonwealth have made laws placing a restriction upon the professions and occupations of Indians domiciled in those Dominions, under your scheme of the White Paper India will not have the corresponding and correlative right of placing the same restrictions upon the Nationals of those Dominions ?—That is so, under our proposals, but, as Sir Hari Singh Gour will remember, I did emphasise the importance of the right of refusing the power of entry.

15,557. The Secretary of State knows that the refusal of the right of entry was conceded to India as far back as 1917.

I have drawn the attention of the Secretary of State to the Resolution and the White Paper makes no improvement upon the status of India as defined by the War Conference of 1917 ?—I gave the reasons yesterday, and I really have nothing to add to what I then said. That does not in the least imply that I am not conscious of the fact that there is a very deep feeling in India upon this question, and, when the Committee come to consider this question in detail they must not ignore the depth of this feeling, for which in my view there is a good deal of justification.

*Marquess of Reading.*

15,558. May I say one word, Secretary of State ? It is quite clear, is it not, that what you are doing here is merely reproducing what is already in Section 96 of the Government of India Act and is actually in force at this moment. I mean the particular first part of your memorandum ?—Generally speaking, that is so. As I said yesterday, it is a continuation not only of the Act of 1919, but the unbroken policy of more than a century.

*Sir Hari Singh Gour.*

15,559. That unbroken policy of a century has been departed from by the Dominions in consequence of the exalted status which they now enjoy under the Statute of Westminster and under the rights conferred upon them by several Imperial Conferences. Therefore, while they have improved their position, India remains exactly in the same position as it was a century ago ?—I should like to see them conform their practice to India rather than to see India conforming her practice with one of the Dominions.

15,560. That is just the point I was coming to. By stereotyping the rights and privileges of the Dominion subjects in British India by an Act of Parliament you deprive India of the right which she possesses of enforcing the principle of reciprocity in the future Imperial Conferences on the strict basis of equality ?—That is Sir Hari Singh Gour's comment upon the proposal. My comment I made yesterday, and I really have nothing to add to what I said yesterday.

15,561. The Secretary of State has mentioned in sub-clause (ii) of paragraph

1 of his Memorandum in which the decision of the Round Table Conference is quoted their recommendation that the rights of British commercial communities should be regulated on a reciprocal basis ?—Yes.

15,562. Is that complete reciprocity as between the United Kingdom and India ?—As near as we can make it.

15,563. For example, the subject of domicile—British subjects possess certain rights because they are domiciled Nationals of the country, and because your Constitution is not a codified Constitution but is a fluid unwritten Constitution Indians are excluded at the present moment from several Services as, for example, the Officers' Training Corps, and employment even in India in the Cypher Bureau. Do you think that the proposal you have in view would in any way bring about that reciprocity to which you have referred in the paragraph I have quoted ?—Yes, I think so. The reciprocity, as Sir Hari Singh Gour will remember, is restricted to certain definite subjects : Taxation, travel and residence, holding property, and so on.

15,564. Then do I take it that in other matters the White Paper proposals give India the freedom to legislate in her own interests ?—Outside the field of trade does Sir Hari Singh Gour mean ?

15,565. Yes ?—Yes, subject to the various provisions in the White Paper that is so.

15,566. Unfortunately those various provisions of the White Paper cut down the power of legislation to one word. The Governor-General in his discretion may overrule the Legislature ?—In the field of his special responsibilities.

15,567. Yes ; that is exhaustive of the rights which the Governor-General in his discretion may exercise and which means the control of the Secretary of State and of the British Cabinet ?—The ultimate control. But Sir Hari Singh Gour will remember that there is no bar, speaking generally, upon the power to legislate, with one or two detailed exceptions, in the White Paper. The Governor-General only intervenes where one of the special responsibilities is actually seen to be in danger. It may be in actual practice his intervention will be very rare.

15,568. But the Secretary of State recognises that it is the ultimate control that counts?—No; I do not think I would ever give an answer Yes or No to a very general question of that kind.

15,569. There is some little misapprehension. I am quite sure that the draftsman never intended it, but it is there. I drew the attention of Sir Malcolm Hailey yesterday, and I wish to draw the Secretary of State's attention to-day to this: In paragraph 3, sub-clause (ii), Clause (a), it is stated that it is "to provide that no laws restricting the right of entry into British India shall apply to British subjects domiciled in the United Kingdom, subject to the right of authorities empowered by any legislation to exclude or remove undesirable persons to exercise that power in respect of an individual, notwithstanding the fact that he is domiciled in the United Kingdom." I understand this clause to mean that the right of exclusion and removal of an undesirable person is a right inherent in the Indian Government, in the exercise of which Colonial and other British subjects might be excluded, and this was intended to emphasise that persons domiciled in the United Kingdom are no exception to the general rule?—That is so.

15,570. But I beg to submit that that might be made clearer than it is in this paragraph?—I see Sir Hari Singh Gour's point; at least, I think I see it; he will correct me if I am wrong. This paragraph says that an undesirable British subject domiciled in the United Kingdom can be excluded. He wishes to know whether this power of exclusion also covers the right to exclude an undesirable British subject domiciled in the Colonies or the Dominions. That is so. It is meant to make both exclusions possible.

15,571. I therefore submit that an independent clause might be inserted giving the Government of India the right of exclusion of all persons whether members of the British Commonwealth or not?—We can make it clear in the draft.

*Sir Hari Singh Gour.*] Thank you.

*Mr. N. M. Joshi.*

15,572. In the case of a British subject born in the Colonies, the right to restrict

entry also includes the right to exclude those people and also to deport them. It is not necessary in my judgment in that case. There is the right to restrict entry which really means to exclude those people. It may also be implication go further?—But this point here is a rather different point. This deals with special cases, say, of a criminal, whereas the other right of exclusion would be of a more general character.

15,573. My point was, Secretary of State, that the bigger right includes the smaller?—That is a drafting point.

*Sir Hari Singh Gour.*

15,574. I think my friends behind me have not really appreciated the point I was making. They seem to suggest that the right of prohibition of entry postulates and carries with it the right of removal. That is not so, because if a person has unlawfully entered, then he has not entered at all under the Act, and he is therefore removed, but the right of removal and exclusion contemplated by this Clause deals with persons who were resident in India and may even be domiciled in India, but have proved themselves to be undesirable persons, which gives the Government the right of removal and exclusion?—Yes; that is so.

15,575. The two points, therefore, are quite distinct?—Yes, you are quite right.

15,576. I have not yet been able to understand, Secretary of State, the real clear import of sub-clause (iv) of paragraph 3, which deals with the case of a company incorporated in India where the British subjects domiciled in the United Kingdom are deemed to be domiciled and resident when they are neither domiciled nor resident in British India, and the effect of which in plain words would be this: No law passed by the Indian Legislature imposing any restriction in respect of domicile, residence, etc., upon British subjects domiciled in the United Kingdom shall be of any effect. That is the meaning in plain language of this Clause. Is it not so?—No; not at all. The meaning of the Clause is the meaning that Sir Malcolm Hailey and I explained in answer to a question of Lord Reading's yesterday. This Clause deals with the setting up of

companies in India. The Indian Legislature can make conditions, but if those conditions affect domicile, residence, duration of residence, and so on, a United Kingdom Company incorporated in India would for that purpose count as an Indian Company.

15,577. That is the point I am making, namely, that a person domiciled in the United Kingdom shall, notwithstanding an Indian Law to the effect that he shall be domiciled in India, be deemed to be domiciled in India for the purpose of this Clause. That is the meaning?—Yes; that is so.

15,578. That is exactly what I was driving at. In other words, you have enlarged the meaning of the word "domiciled" and carried its import to the extent that persons who are not domiciled in India will be deemed to be domiciled in India for the purpose of this Clause?—I could not accept that comment, great lawyer as Sir Hari Singh Gour is. This Clause deals with companies of shareholders—the qualifying of shareholders, etc.

*Marquess of Reading.*

15,579. It simply means to comply with the conditions imposed by the law in regard to these various matters. That is the intension of this paragraph?—Yes.

*Mr. M. R. Jayaker.*] This Clause does mean this, Secretary of State, that to persons who have never been domiciled or resided, and never have had the language, the race, religion, or descent of an Indian, you are extending to every resident in the United Kingdom the benefits as if they had been domiciled, or resided, or had the language, the race, the religion, descent, etc., of an Indian.

*Sir Hari Singh Gour.*

15,580. Yes?—For the restricted purpose of this Clause.

*Sir Hari Singh Gour.]* Yes.

*Mr. M. R. Jayaker.]* That is so. People who have never been out to India, even for a month, under this extended provision will get all the benefits as if they had resided, been domiciled, etc., as in this clause provided.

*Sir Hubert Carr.]* Provided the Company is incorporated in India. Is not that so?

*Marquess of Reading.]* It is only in reference to the conditions imposed on the company. It does not go any further than that.

*Mr. M. R. Jayaker.*

15,581. I am speaking for the purpose of this clause; for the limited purpose of this clause you are giving to every resident of the United Kingdom all the benefits as if he had resided, had been domiciled, etc., in India?—*Mr. Jayaker* will remember, however, that the range of benefits is a strictly limited range.

15,582. Yes?—For the purposes of that restricted limited range, his answer is correct, but his questions seemed to imply a much more extensive range than is really the case under this clause.

15,583. No. I said for the limited range of this clause?—Yes.

*Sir Hari Singh Gour.*

15,584. Even for the limited range of this clause, is there any British law in India which gives to Indian subjects the same right here at the present moment?—I could not say off-hand. I know very little about the law on that matter.

15,585. If there were no law on the subject, this clause would not be justifiable?—Whether there is such a law or not I do not know, but supposing we did anything to the contrary, then, under the reciprocity arrangement we should lose this advantage.

*Sir Hari Singh Gour.]* Yes; that is so.

*Mr. M. R. Jayaker.*

15,586. May I ask a question on that point?—You remember, Secretary of State, only about three or four months ago there were certain scholarships given here by a public man (I do not want to mention names) and it was expressly stated that they were only open to persons who were domiciled in the United Kingdom. Would you apply a principle like this, that all those who were domiciled in India would be, for the purpose of obtaining those scholarships, regarded as if they were domiciled in the United Kingdom?—Surely the case that *Mr. Jayaker* is putting (I do not know about it myself) I would imagine is not the act



of a government ; it is the act of a private individual.

15,587. I am merely mentioning the principle ?—This clause deals with the act of government.

Sir *Austen Chamberlain*.]—Could we hear Mr. Jayaker's question ? I missed the opening words.

Mr. *M. R. Jayaker*.

15,588. I read in the papers about three or four months ago of scholarships being given by a public man with the express condition that they were to be obtained by people who were domiciled residents of the United Kingdom. I know it is the case of a private scholarship. Therefore, the instance is not quite in point. But I am explaining the principle of this clause : supposing an Act were passed in the Imperial Legislature here, in the House of Commons, which said that certain benefits, either of scholarship or educational, were only open to residents domiciled in the United Kingdom ?—Mr. Jayaker, this clause, really, so far as I can judge, does not deal with an issue of that kind at all ; this clause deals only with companies.

Mr. *M. R. Jayaker*.] Yes, I am speaking of companies.

Sir *Joseph Nall*.] May I ask this : Is not it the fact that this is exactly copying the procedure in English law ? There is no discrimination against any English company if there is any Indian associated in it or with it.

Mr. *M. R. Jayaker*.] I am not aware of that. The question was asked by Sir *Hari Singh Gour*, and the Secretary of State very properly replied that he could not answer the question offhand. That is why I am not pursuing it further.

Marquess of *Reading*.] I will answer that question and say that there is not in our Company Law any such restriction. That is the question I understood Sir *Joseph Nall* to put.

Sir *Hari Singh Gour*.

15,589. My last question to the Secretary of State is regarding the coastal shipping. By this clause you have prevented the Indian Government from reserving the coastal shipping to Indian companies domiciled in India, and it is

with reference to that that this clause that we have been discussing becomes very germane, namely, sub-clause (4) of main Clause (3) ?—Yes. It is really sub-clause (8), is it not ?

15,590. Yes. The net result of this would be that the Government of India will never be able to do what the Australian Government have done, namely, reserve the coastal traffic to the nationals of Australia ?—I speak with hesitation about what any Dominion does, but my impression is that that is not the case with Australia.

Sir *Phiroze Sethna*.

15,591. Sir *Samuel Hoare*, yesterday you mentioned to the Committee the recommendations made by the External Capital Committee, otherwise known as the 'Blackett Committee' ?—Yes.

15,592-3. It not there a further recommendation in that Committee's Report, or has not the Government of India been enforcing a further condition, namely, that in the case of new companies to be started in India which desire to avail themselves of any concessions offered by the Government, a certain proportion of the capital should be offered to Indians, in the first instance ? I quote two instances. In the Indian Radio-Telegraph Company the Government of India stipulated that 60 per cent. of the shares should be held by Indians. Similarly, in regard to the Civil Aviation Companies that have been formed, it is also laid down that more than 50 per cent. of the shares should be held by Indians. Are you aware of that ?

Marquess of *Reading*.] May I ask you, Sir *Phiroze*, when you say, "held by Indians," do you mean native-born Indians or persons domiciled in India ?

Sir *Phiroze Sethna*.] It is said generally. I could not tell you, my Lord, whether it is meant domiciled in India or otherwise.

Witness.] I could not say offhand whether the details are as Sir *Phiroze* states or not. My memory is that the condition was that the shares should be offered to Indians.

15,594. In the first instance ?—In the first instance.

15,595. Questions were put to you yesterday in regard to shares in such companies, whether they should be held by those residing in India. I do not remember your answer, but is not it a condition laid down in the Reserve Bank Act that shares in that Bank will only be allotted to residents in India?—Here again it is very difficult, without referring to the Report of the Committee, to give a specific answer. My memory goes to show that that is so. I should like to confirm the actual wording of the recommendation.

Mr. M. R. Jayaker.

15,596. Under the operation of Clause 4, as you have worded it here, residents in the United Kingdom who have never resided in India would be entitled to that provision?—If that is so, I think it would be a case for rather more rigid drafting and ensuring the Reserve Bank conditions. Moreover, Mr. Jayaker will remember that as the Reserve Bank Bill will be passed before the Constitution comes into operation, any conditions laid down in the Reserve Bank Bill will be safeguarded.

15,597. The point I was making to you, Secretary of State, was this, that the wording of Clause 4 has been made so inclusive that it would be difficult to draft a condition which is intended only to cover native-born Indians except by putting in the words "native-born Indians." It would be difficult to include them by any conditions based upon domicile or residence because you have got in this clause nearly every test by which a native-born Indian must be distinguished from residents of the United Kingdom?—If that is so, it is a case for more careful and comprehensive drafting in the next stage of our discussions.

Mr. Zafulla Khan.

15,598. Secretary of State, with reference to the second consideration that you have put forward, as regards the Reserve Bank Bill, that the Bill will have become a Statute before the new Constitution comes into force, supposing after the coming into force of the new Constitution a block of shares in the Reserve Bank were sought to be acquired by somebody who under your definition in

Clause 4 of your Memorandum could be regarded as a domiciled Indian or an Indian resident in India, would he be able to acquire that block of shares?—The safeguard, Mr. Zafulla Khan, would be that in that case the Board could refuse to register the transfer of the shares under the Act.

Sir Phiroze Sethna.

15,599. What reason would they advance for such refusal?—I imagine the conditions under which the Bank would be set up. I imagine (I am now using the phrase in a general way) it would really be outside their articles of association.

Marquess of Reading.

15,600. If the Reserve Bank Act, when it comes from the Legislature, contains any such clause, it would necessitate, would it not, some provision which would meet the exception which you have put here in paragraph 4?—It is a question then of drafting so as to meet that particular clause?—It might well be so. If it is not met in another way, we might have to meet it here.

Lord Rankeillour.

15,601. Will the Reserve Bank be an incorporated company within the meaning of these words?—That is a lawyer's question, I am afraid.

Sir Hari Singh Gour.] If it is a shareholders' Bank it will be an incorporated company.

Marquess of Reading.] It must be.

Witness.] It will be an incorporated company under special conditions.

Sir Hari Singh Gour.

15,602. Incorporated under the provisions of that special Act?—Yes.

Mr. M. R. Jayaker.

15,603. But it is incorporated in India; those are the words in Clause 4?—Yes.

Sir Phiroze Sethna.

15,604. Mr. Secretary of State, you have headed sub-paragraph (6): "A Special Provision for Ships and Shipping." Is not this quite new? Was this

discussed at any one of the three previous Round Table Conferences?—I cannot remember whether we discussed it. I certainly remember the question of shipping came up now and then. It is in the White Paper. This is merely a comment upon what is in the White Paper. There is nothing new here as compared with the White Paper.

15,605. Was it ever intended in any discussions at the three Round Table Conferences, or is there anything to show in the White Paper, that ships registered in the British register can also be registered in the Indian register on terms of equality, as is proposed?—The Clause is 123 in the White Paper: "Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in British India and the United Kingdom."

15,606. We do not remember having discussed this at any of the Round Table Conferences. I do not know how it has crept in in the White Paper?—I do remember discussions. I do not remember how detailed they were.

15,607. Will not this mean that India will be deprived of the advantage of a separate Indian register, such as is maintained by other countries, in order to distinguish its Mercantile Marine from the Mercantile Marine of other countries?—No, that is not so, Sir Phiroze.

15,608. Why not, Mr. Secretary of State?—I do not know why not, but it is not so, anyhow. I think it would be an unnecessary restriction upon the Indian Government.

Mr. N. M. Joshi.

15,609. Can ships registered in India have any kind of preference over ships registered in the United Kingdom?—No.

15,610. Sir Phiroze Sethna's question is: Why should people register their ships in India?—It is a part of the general reciprocal arrangement—the same treatment for both.

Sir Phiroze Sethna.

15,611. The second sentence of that sub-paragraph reads: "It is usual in all treaties relating to matters of com-

merce to specify not only individuals and companies but also ships, where it is intended to give rights in regard to matters of shipping and navigation." This, surely, Secretary of State, is not a treaty between two separate entities, but this is more a matter of the Constitution in the making. Would you still insist upon this clause?—We certainly insist upon the clause, and Sir Phiroze's point about its not being a treaty is not quite accurate. The object of this reference is to show that in legal documents, for instance, treaties, you would have to make this distinction between ships and persons and companies.

15,612. You just now replied to Mr. Joshi that your suggestion is on the basis of reciprocity?—Yes.

15,613. Would you regard reciprocity between such diverse interests as British shipping and Indian shipping as the difference between a giant and a dwarf? Would you regard that as a fair means? The difference between Indian shipping and British shipping is so very vast that the British shipping has everything to gain and nothing to give?—I would not say that at all. I would say that if Sir Phiroze, with his business experience, would look at the profit and loss account of British shipping companies within recent years, he would find that that is very far from the case.

15,614. That may be so within recent years, but it has not been so in the past, as you cannot but admit. These shipping companies have all paid dividends and very large dividends. It is only on account of the world depression at present that British shipping, like other shipping, is not doing as well. It would simply amount to this, that the all-powerful British shipping will continue to crush Indian shipping as it has done in the past?—I should demand to every part of this statement.

15,615. Has not that been our experience in the past?—I should say it had not.

15,616. Are you aware, Mr. Secretary of State, that between 1860 and 1925 as many as 120 Indian shipping companies were formed with a capital of about 46 crores of rupees, which in sterling

amounts to more than 30 millions, and that of those only a very few remain, and all because of competition?—I should very much doubt if it was all because of the competition of particular British Companies.

15,617. If you would like proof of that I will quote from an English authority, namely, the Chairman of the Madras Chamber of Commerce, who in his evidence before the Royal Commission said as follows—the gentleman whose opinion I am quoting is the Hon. V. G. Lynn, Chairman of the Chamber of Commerce of Madras: “It is not generally known what is the nature of the combination, agreement, or understanding between the steamship lines serving Indian ports, but an agreement or understanding of some sort undoubtedly does exist between the British India Steam Navigation Company and the Asiatic Steamship Navigation Company to maintain freights and passenger rates and to create a monopoly for themselves in the Indo-intercoastal, Indo-Ceylon and Indo-Burman trades.” He stated further: “From time to time efforts have been made by independent lines to participate in the Indo-intercoastal, Indo-Ceylon and Indo-Burman trades, but the active competition of the B. I. S. N. Co. and the tacit support of the Asiatic Company has invariably resulted in the opposing steamers and lines being withdrawn after a short time.” Sir Hubert Carr says that the B. I. must be very efficient. I would like to pursue that point. Did not the B. I. attain the success that it did because of the subsidies that it received from the Government, or otherwise it would not have started?—I really could not answer Yes or No to a question of this kind. These are detailed questions connected with the past of a lot of private companies. It is very difficult for me to go in detail into their records over a number of years. I should still say, whether it be so or not—and I am inclined to think that it is not so—it is necessary to have an agreement of reciprocity between governments in question of this kind.

15,618. My point is that the reciprocity is not possible between the very strong and powerful British shipping interests and Indian interests. For

example, I take it that you would advance the theory that Indians, if they wanted to do so, could come here and start in the coastal trade, and there is no objection to the same?—Yes.

15,619. I suppose you are aware what is the percentage of foreign shipping interested in the coastal trade of this country?—No.

Sir *Phiroze Sethna.*] Not more than 2 per cent., and that in spite of such strong and well developed organizations as the Dutch and the German have; so it is next to impossible for India to compete with British shipping interests unless they are afforded some privileges. Lord Irwin will correct me if I am wrong, but I think even he mentioned during his Viceroyalty in India (I believe at Cawnpore) that it was difficult in modern days of competition for Indian shipping to continue without State aid, and I think Sir Austen Chamberlain made the observation last night that there is no trade which requires subsidization or is subsidized more than is shipping.

Sir *Austen Chamberlain.*] I did not say “which requires.” Do not let me be represented as an advocate of that system.

Sir *Phiroze Sethna.*] You may not be an advocate, Sir Austen, but you recognize the fact.

Sir *Austen Chamberlain.*] I recognize the fact.

Sir *Phiroze Sethna.*] That is all I wanted.

Witness.] But before we pass from, I will not say questions, because I think really Sir Phiroze has been expressing a view, a view with which on the whole I do not agree, I would ask him to consider the implications of his argument, namely, that there should be discrimination against British trade. That implication means the complete contradiction of the general agreement that we have had in the past, namely, that there should not be commercial discrimination.

15,620. Not generally speaking, but in some cases such as this, would you not recommend it?—No.

15,621. That would mean that Indian shipping would never advance beyond

what it is to-day?—I should not agree with that comment either.

15,622. You are aware that the navigational laws of this country prevented goods from being brought into this country in Indian bottoms, so that there was discrimination against Indian interests in this matter years ago?—I suppose in theory there was such discrimination in the seventeenth century, but how far that has any bearing upon our present discussions I fail to see.

15,623. You say that because that was in the 17th century it does not apply to-day. Is that your answer?—I should have said that it had no bearing at all upon our present discussions.

15,624. But according to you, Sir Samuel, it has a bearing because in answer to Mr. Morgan Jones yesterday, you said that you are recommending this process of reciprocity on account of the nature of the partnership that has existed between England and India for decades or centuries?—But does Sir Phiroze Sethna really mean to imply that India has a grievance because in the 17th century we had a discrimination? There was not a single Indian ship sailing in European waters then.

15,625. Yes, there was. There was the famous case of the steamship "Cornwallis"?—There could not have been a steamer in the 17th century.

15,626. You are perfectly right?—I should have thought this was dragging up historical instances as imaginary grievances at the present time.

15,627. I have brought it out for the simple reason that there are certain industries in India which will require to be helped, and this is one of those, otherwise Indian shipping will never advance, and it does require to be supported?—But Indian shipping has advanced considerably in recent years.

15,628. I would not say so?—I have seen many memoranda showing the great advance that Indian companies have made in the coastal trade.

15,629. There is only one company which is able to live to-day, because of an arrangement arrived at with its powerful rivals. Otherwise the other shipping companies have all gone to the wall?—Shipping companies have gone

to the wall in large numbers all over the world in recent years.

15,630. I know that, but the reasons all over the world are different from the reasons which prevail in India. That is what I want to bring out. In the Imperial Conference of 1926, it was laid down that there would no longer be any doubt as to the full and complete power of any Dominion Parliament to enact legislation in respect of merchant shipping, nor would Dominion laws be liable to be held inoperative on the ground of repugnancy to laws published by the Parliament of the United Kingdom. In spite of that you are imposing this hard condition on India and I am requesting the Committee to consider whether they will, in the case of Indian shipping, extend to them some privileges as have been frequently asked for?—As Sir Phiroze Sethna is quoting these instances from the deliberations of Imperial War Conferences, he should also quote at the same time Part IV of the British Commonwealth Merchant Shipping Agreement, 1929, and particularly Article 10; "Each Part of the British Commonwealth agrees to grant access to its ports to all ships registered in the British Commonwealth on equal terms, and undertakes that no laws or regulations relating to sea-going ships, at any time in force in that part, shall apply more favourably to ships registered in that part, or to the ships of any foreign country, than they apply to any shipping registered in any other part of the Commonwealth."

15,631. I am not aware of that. Thank you for drawing my attention to it? But what I have quoted shows that the Dominions and the Possessions are given a freedom which you are denying to Indians. Now, Mr. Secretary of State, I am not going to touch on the subject of the Fiscal Convention, as you have suggested that that will be taken up later, but may I read to you the sentence from Mr. Montagu's Speech as follows: "After that Report", namely, the Report of the 1919 Joint Select Committee, "by an authoritative Committee of both Houses and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe.

was wisely given and which I am determined to maintain, to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaint from us, have always chosen the tariff arrangements which they think best fitted for their needs, thinking of their own citizens first." Of course, Fiscal Convention and commercial discrimination are two different things, but do not you agree that since the object in view is the same, namely, the development of Indian industries, the same principle should apply, subject to one important modification which you mentioned in reply to Mr. Morgan Jones' question. We recognise that in the case of British Companies already established and operating in India there is a moral claim for protection; but can you explain why in future and in the case of companies not operating in India at present India should not have the same rights and liberties as regards internal regulation as Great Britain and the Dominions?—Sir Phiroze has made a Second Reading Speech in favour of commercial discrimination. I can only reply that I do not agree with it.

15,632. Do you agree with the Convention about purchase of stores as laid down in the Simon Commission Report? You do not propose to disturb that, do you?—No.

*Mr. M. R. Jayaker.*

15,633. May I just ask your attention to paragraph 3, Secretary of State? "It is proposed that the Constitution Act should contain a general declaration that no British subject (Indian or otherwise) shall be disabled", etc. May I suggest to you that for the purpose of clearness it would be better if you separated the case of Indians in India from those who come into India, either, the residents of the United Kingdom or Colonials or others, because the case of India stands on a different footing and it will tend to clearness in India if you took out the case of Indian born Indians, like minorities and their rights, because they stand on a different footing? I am therefore asking if you will consider the splitting

up of this clause into two, one dealing with rights of Indian minorities, because they will be fundamental rights like the rights of holding property, etc., and another clause dealing with the rights of non-Indians to whom you give protection in the country?—I will attend to Mr. Jayaker's suggestion. I would not like to express an opinion one way or the other without looking into it further.

15,634. You make no distinction throughout your Memorandum, Secretary of State, as regards bodies which were trading with India at the date of the Constitution Act, but which were not resident in India nor had establishments there. You make no distinction between bodies which were trading and had residence and establishments and those which were merely trading but who had no residence and no establishments?—No; and I do not think you can make any distinction of that kind.

15,635. Because I am asking your attention to the Report of the Second Round Table Conference at page 57 of the copies supplied to us, paragraph 24. This was the Report of the Committee: "The question of persons and bodies in the United Kingdom trading with India but neither resident nor possessing establishments there requires rather different treatment. Such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing. Nevertheless, the Committee were generally of opinion that, subject to certain reservations, they ought to be freely accorded, upon a basis of reciprocity, the right to enter and trade with India." You have made no such distinction between these two classes in the memorandum or in Proposals 122 to 124 of the White Paper?—Mr. Jayaker's point, if I understand him rightly, is that reciprocity ought only to cover genuine traders in and with India.

15,636. Yes?—I will look into the point and communicate further with him about it.

15,637. Although we differed materially on many of the points the utmost agreement that was recorded was on this principle, that those who were genuine traders dealing with India who had established themselves had a moral claim

which did not belong to anybody else. That was the basis on which we proceeded throughout, and I think those Indians who agreed with the views went on this principle, that those who were in India already under a different system of government should in no way be prejudiced by a change of Government. That moral claim, I am putting it to you, cannot possibly apply to others who come in for the first time after the Act is passed or who are not genuine traders with India?—(Sir *Malcolm Hailey*.) The distinction, I think, Mr. Jayaker, will apply mainly to eligibility for bounties. It was that, I think, which he had in his mind.

15,638. No, it will apply beyond that, Sir *Malcolm*. For instance, if India had the liberty of laying down conditions which you prescribe for bounties only in this memorandum, in the case of all companies which come in for the first time after the Constitution Act, India will certainly have a very strong leverage for Indianising those companies not only in respect of bounties, but in the terms of incorporation; but do you see any justification for according to people who come into India after the Constitution Act, or who are not genuine traders with India at all, the same protection as those companies which have acquired an equitable and moral claim to be protected under the New Constitution?—We only protect the new Companies coming in against certain regulations in regard to their composition. That is the extent of the protection for new Companies coming in. The ground for doing so is that if you did not give them that precise form of protection you would be to that extent prejudicing not companies, but British subjects as such.

15,639. If that is your contention, may I point out to you in paragraph 3, subparagraph (iii): "As regards companies which are or may hereafter be incorporated in the United Kingdom," you must necessarily limit that expression "incorporated in the United Kingdom" by the residents of the United Kingdom?—I think the only way which you have, in point of law, of distinguishing in this respect is incorporation.

[*Marquess of Reading*.] There is no such thing as a resident company. It is a

company which is incorporated in a particular place, which makes it equivalent to residence or domicile in the case of a subject.

Mr. *M. R. Jayaker*.

15,640. What would happen to a Company incorporated in England, but which was composed mainly or entirely of Colonials coming from a country which did not give equality to Indians? It would fall under your definition "incorporated in the United Kingdom", although the members who formed that company were all Colonial or Dominion men?—We have to admit that there is point in what Mr. Jayaker says, that as our only legal basis of distinction is incorporation that might allow Colonials starting a company incorporated in Great Britain to get the advantage of this Section, but the difficulty is that you can never tell at one particular time what exactly is the composition of your shareholders' list. If you laid down that the company must not only be incorporated in the United Kingdom, but must consist of residents of the United Kingdom itself, you would be dealing with a constantly shifting body, and it would be very difficult in point of law at one time or another to say whether your shareholders were residents in the United Kingdom or were Colonial to take Mr. Jayaker's instance. It is a continually shifting list. The only test we have been able to find for a satisfactory discrimination in point of law is incorporation, as Lord Reading says.

15,641. But supposing you took the nature of the company at the time of its incorporation. I am aware of what you say, and I quite agree it would be difficult to say that the conditions were satisfied at all stages by the same company, but supposing you take the ease of incorporation, do not you think it will prevent many Colonials getting the rights of trading in India. You are aware how strong is the feeling against Colonials trading in India coming from countries which do not allow the same advantages to India. I want to ensure that the benefit given by this clause is entirely in favour of residents in the United Kingdom and not in favour of Colonials who will come and form a company in England and go and get the

privileges which this country is given in India?—(Sir *Samuel Hoare*.) We will look into the point, but I do not disguise that it is a very difficult question.

15,642. You could say that a proportion of directors or shareholders must be residents of the United Kingdom, just as you do in the case of the bounties. There you recognise that a certain proportion of the directors must be of a certain nationality. You can do the same here. I am only anxious to prevent that this clause should be made the occasion of Colonials getting in India trading rights which they would not get otherwise?—(Sir *Malcolm Hailey*.) It is exceedingly difficult, no doubt, because there is the case of the holding company. One company may hold the shares in another. It is exceedingly difficult if you are to look behind your list of shareholders at any time and say whether they are residents of one particular place. I am sure everyone accustomed to dealing with companies' lists will realise that difficulty.

Sir *John Wardlaw-Milne*.] Would not there be a difficulty in a case such as Mr. Jayaker suggests, that you might have nominees appointed? That seems to me to be a cardinal difficulty at once.

Marquess of *Reading*.] Or a holding company registered as the shareholders.

Earl *Winterton*.] I think we ought to understand what is meant in the questions and answers by the use of the term "Colonial." The term "Colonial" applied to British subjects in the Dominions is quite out of use. By the term "Colonial" do you mean British residents in the Crown Colonies or British residents in the Dominions?

Mr. *M. R. Jayaker*.] I meant both. I meant residents in the Crown Colonies and residents in the Dominions.

Earl *Winterton*.] There is a very vital distinction.

Mr. *M. R. Jayaker*.

15,643. I know; I am much obliged to you for reminding me. In Clause 3 (iv), to which your attention has been called by several Members, what is it you want to secure, Sir Samuel, by that extended definition? You agree that in the case of private companies it will have no operation, because a private company, if

it wants to exclude non-Indians, can always use the expression "Indian born Indians," and then your Clause becomes nugatory. In the case of Legislation, that is to say, a company which is incorporated by Legislation, only in such cases will this Clause come into operation, and, in such cases, may I point out, as you pointed out rightly in reply to a previous question, that it is always in the option of the directors to accept shareholders' application, so it is also in the hands of the shareholders to appoint directors. Similarly agents and servants is a matter entirely in the hands of the company. Therefore, even in the case of a company which is incorporated by an Act of the Legislature, to which this alone would apply, it would be so easy to defeat this Clause by putting the words "Indian born." In what cases do you think this Clause is operative?—(Sir *Malcolm Hailey*.) We fully realise what Mr. Jayaker says. There is full liberty for the company to constitute itself under its Articles of Association, to appoint what directors it likes, and so on. The object of this Clause is to prevent legislation making requirements in the case of companies which would act to the prejudice of United Kingdom residents; that is all.

15,644. This Clause would mean this, to put it in plain English: British subjects domiciled in the United Kingdom will be entitled to become directors, shareholders, agents and servants. Is not that so? It does not go beyond that "will be entitled to become directors, shareholders, agents and servants"?—Or, rather, that the company will not suffer in any way as a company if the directors, shareholders and so forth, are United Kingdom residents instead of residents of India. That is the extent of the Clause, and no more. It confers no title on anyone to be a director or a shareholder.

15,645. Therefore, it comes to this: At the most this Clause only gives the right to the residents of the United Kingdom to become directors, shareholders, agents or servants, as if they were Indians. I am putting a short expression?—Yes.

15,646. But it does not take the Clause beyond that because if the company was so minded as to discriminate between



Indian born Indians and the Statutory Indians, if I may use the expression, they can always say that the directors will be Indian born Indians?—Undoubtedly.

15,647. Therefore, what is the operation of this Clause?—I think Mr. Jayaker must read the Clause as though it conferred certain rights on British Indian residents to take part in the company as shareholders or directors. The intention of the Clause is merely to prevent a company from being prejudiced if the law lays down that at its incorporation it should include a certain proportion of Indians and the like. In that case, United Kingdom residents would come as Indians and therefore comply with the law. The company having complied with the law to that extent would not be prejudiced in point of taxation, and so forth.

15,648. I see. Then in sub-paragraph (vi) you say "in addition, it is proposed that the Constitution Act shall require the reservation for the signification of His Majesty's pleasure of any Bill which, though not in form repugnant to the provisions indicated in Clauses (ii), (iii) or (iv), the Governor-General in his discretion considers likely to subject to unfair discrimination any class of His Majesty's subjects." Is it anything more than paragraph 39 of the White Paper? You have in paragraph 39, a very unlimited power to the Governor-General: "The Governor-General will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure." Is it anything more than this?—The important words in sub-paragraph (vi) are "though not in form repugnant to the provisions indicated in Clauses (ii), (iii) or (iv)."

15,649. But surely the Governor-General will always consider it. He will not be blinded by the form of the Bill. I want to know whether it takes paragraph 39 further?—You will notice it makes the reservation obligatory.

15,650. Therefore, you say in such a case, out of the three alternatives which

are open to the Governor-General in paragraph 39, he will not be at liberty to follow two out of the three. Is that what you mean?—(Sir Samuel Hoare.) Yes, that is so.

15,651. If so, why are you making it strict, especially in the case of unfair discrimination in the case of His Majesty's subjects? I can understand your making it strict in the case of discrimination in favour of the residents of His Majesty's Kingdom, but why are you so tender about His Majesty's subjects in other parts of the Dominions and the Colonies?—But, Mr. Jayaker, this is not simply British subjects or Dominion subjects. It is all subjects, including Indians, protected by these clauses.

15,652. As I was mentioning to you, the case of Indians should be entirely in a different clause, because it will create a lot of confusion if you treat the case of Indians in all these clauses as on a par with residents of the United Kingdom or Colonials or Dominion people. I am suggesting that the case of Indian minorities should be treated separately. Assuming you leave Indians out, I am suggesting, if you must make the Clause so strict as to limit the liberty of the Governor-General which is given by paragraph 39, why not confine it to cases of unfair discrimination as against the residents of the United Kingdom only?—I understand the Clauses to be so in effect.

15,653. It is "His Majesty's subjects"; that is the expression?—(Sir Malcolm Hailey.) It only refers to sub-clauses (ii), (iii) and (iv).

15,654. Sub-clause (vi)?—(Sir Samuel Hoare.) Yes, but Mr. Jayaker will see that this clause only refers to sub-clauses (ii), (iii) and (iv).

15,655. Yes, it is mentioned there, (ii), (iii) and (iv). That is just the reason. I just want you to follow my point because it is a little intricate. You have mentioned Clause (ii) to which this principle will apply. If you refer to Clause (ii), it refers to the right of preventing the entry as you explained yesterday in answer to Mr. Zafrulla Khan?—Yes.

15,656. Therefore, if there is a Bill (I am explaining how sub-clause (vi) will operate) which prevents the entry of any class of His Majesty's subjects resident in the Colonies and the Dominions, this

strict Clause will apply, and the Governor-General in such a case will be compelled not to act upon the two alternatives, but in every case he must reserve it for the signification of His Majesty's pleasure. Why is such a strictness necessary in the case of His Majesty's subjects in the Dominions?—Mr. Jayaker's explanation of sub-clause (ii) I do not think is accurate.

15,657. I thought you said yesterday, in answer to Mr. Zafulla Khan, that sub-clause (ii) gave the right of restricting the entry of the Dominions' and Colonies' subjects into India?—(Sir Malcolm Hailey.) It gives the right of restricting the entry of residents from the Dominions and Colonies merely because it does not apply to them the protection that is extended to residents of the United Kingdom.

15,658. That may be the way in which the principle comes in, but it does come in, I think. Take the words "to provide that no laws restricting the right of entry into British India shall apply to British subjects domiciled in the United Kingdom." The necessary implication is that such a law can be made with reference to people who are not British subjects domiciled in the United Kingdom. Therefore, it does give the right to the Legislature of India to prevent the entry of British subjects not domiciled in the United Kingdom?—I think it might be fair to say that if sub-clause (vi) seems to have the precise effect which Mr. Jayaker thinks, then it will be very easy to alter it in order to give its true implication, namely, that it only stands as a protection to British subjects domiciled in the United Kingdom; that is what it was intended for, and it can in drafting be restricted to that.

15,659. Then I proceed now to paragraph (2). There you mention Mr. Secretary of State, some conditions. I am speaking of homities. You observed yesterday that those conditions are the same as were mentioned in the Report of the Committee on External Capital?—(Sir Samuel Hoare.) Yes.

15,660. Am I to understand that those conditions are illustrative and not exhaustive? I will make my question clearer. For instance, at page 16, if you have a copy of the Report, you find in

Clause 2, Sub-clause (2), where the conditions are mentioned, one condition is, "it has a share capital the amount of which is expressed in the Memorandum of Association in rupees". That condition is not mentioned here?—No; but those are the conditions we have in mind.

15,661. Therefore they are not exhaustive as mentioned there. That is the only thing I wanted to know. You have similar conditions to those which are mentioned in this Report?—Yes. You mean they are not exhaustive in our Memorandum?

15,662. Yes?—Yes.

15,663. For instance, as Sir Phiroze Sethna put it to you, a condition like this, that a certain proportion of capital should be made available for subscription in India would be a condition of this character?—Yes. The conditions we have in mind are the conditions of the External Capital Committee.

15,664. And similar conditions, because they do not exhaust the conditions. I do not want any answer which will unnecessarily create confusion, but what I want to know is this. You have mentioned only two conditions here, Sir Samuel: composition of the Directors and facilities—reasonable facilities, as Sir Austen Chamberlain pointed out—to be given for the training of Indians; there are only two, and I want to know whether you restrict yourself only to two or whether they are merely illustrative of the conditions you have in view?—No. I did not read the whole of the Report of the External Capital Committee. It is the text book upon which we are working.

Mr. N. M. Joshi.

15,665. May I ask one question? Are the conditions given in the External Capital Committee's Report the last word, or could they be added to?—I think substantially this is the basis of what we intend.

15,666. I tell you, Secretary of State, why I am asking this question. When this question was discussed in the Legislature I raised the question whether we could not make a condition as regards the employment of a certain number of Indians in these industries. Some industries may be started and foreign labour

may be imported. I am not suggesting that it is probable to-day, but it may happen that foreign labour may be imported. I therefore suggested that one of the conditions should be that not more than a certain percentage shall consist of foreign labour. Would such a condition be inconsistent with what you are proposing to do?—I do not think it would be inconsistent with these conditions, but I do not want it to be thought that we wish to go outside the general scheme of the Report of the External Capital Committee. I should have imagined myself that the real safeguard against any fear of that kind in the case that Mr. Joshi has just suggested is the universal feeling in India. I cannot conceive myself of any Government here or anywhere else giving a subsidy to a Company for the encouragement of its internal development and allowing the work of the Company to be carried out by imported labour. I should have thought myself that public opinion would have been so strong as to make the immigration of that kind of labour quite impossible.

*Mr. M. R. Jayaker.*

15,667. Now take a condition like this, Sir Samuel : that a certain proportion of the capital should be offered for subscription in India. You would not regard that condition as inconsistent with the scheme of the Report, would you?—I would not like to commit myself to an answer Yes or No, but I will take account of what Mr. Jayaker has said.

*Sir Hubert Carr.*

15,668. May I ask one question with regard to that? Speaking from memory, does not that Committee report very definitely against a special allotment of capital to any special body of people, Indians or otherwise?—I should like to look up the Report before I gave an answer upon that point.

*Mr. M. R. Jayaker.*

15,669. Then you are aware that at the present moment the Indian Legislature has the right and has exercised the right to attach such conditions whenever bounties are given to any Company, whether that Company is existing or future?—Yes.

15,670. I am asking you this : In your scheme you limit the right to attach these conditions only to those Companies which are incorporated after the Subsidy Act?—Yes.

15,671. Now supposing there is an old Company which is a Company which was existing at the date of the Subsidy Act and it refuses to change with the nature of the times, for instance it refuses to allow Indians to become Directors ; it refuses to allow Indians to become shareholders ; it refuses to change with the spirit of the times, and it applies for a bounty out of the national funds : what equity is there that under your scheme it should be entitled to receive this bounty and support from national funds, while all the time it keeps the nationals out by refusing to allow them to become Directors or shareholders? What equity is there that it should receive money from the Indian taxpayers and yet refuse to allow the Indians to come in at any door?—The equity is really founded upon what I said yesterday, that I do not think it would be fair to impose new conditions. The conditions would be new conditions owing to the change of government. I would say that the alteration in the form of government did materially alter the position. That being so, we felt it was fairest to leave existing Companies untrammelled by restrictions of this kind.

15,672. I quite agree with the principle so far as they exist and the rights of these Companies are concerned. I can see the principle although I may differ from it ; but if the Company applies for funds or applies for money, do you mean to say that the man who pays the money has no right to say and the Legislature which pays the money has no right to say, "If you want help from Indian funds you must take in Indians"?—Mr. Jayaker will remember that the object of bounties and subsidies is the encouragement of Indian trade and industry. Can you really draw the distinction between one Company and another as a result of the particular kind of Board of Directors which they have got or their shareholders, when each of them is equally encouraging Indian trade and industry?

15,673. Perfectly true, but is not the taxpayer who pays the money entitled to say that as between two British Companies one of whom is changing with the times, allowing Indians to come in and so on, and another British Company, both existing at the date of the Subsidy Act I will assume—one British Company changing with the times; it has allowed Indians to come in; Indians are getting experience of trading and management; and another British Company which bolts its door and says, “No, hands off”—why should not the Legislature say as between the two Companies, “We think Indian industry is more encouraged by the Company which has changed with the times and is not encouraged by the Company which refuses to change with the times, and therefore we shall give our money to the Company which is helping Indian Directors”? What is there wrong in such an attitude?—To say what is right or what is wrong is a practical question, and I cannot see myself how, when the object of the bounty or the subsidy is the encouragement of Indian trade, you can draw distinctions between one Company and another.

Sir Joseph Nall.] Ought not some consideration to be given to the Company which is already established and is employing Indian labour? Would it be fair to prejudice the further employment of that labour merely to get another Director nominated to the Board?

Mr. M. R. Jayaker.

15,674. It would certainly get a long way in favour of a Company which is taking in Indians and training them, but it comes to this, Sir Samuel, that the Indian taxpayer, although he pays the money, has no right to attach conditions that his countrymen will be taken in and taught the industry or anything of that kind?—For future Companies and not existing Companies. May I remind Mr. Jayaker that this is again, as far as I remember, the explicit proposal of the Report of the External Capital Committee?

15,675. I know; it is also the specific proposal of the Round Table Conference, but we all differed from that, you know, Sir Samuel?—I would not say all.

15,676. At least I did. I am merely painting it out on grounds of equity. Why cannot the Indian Legislature say this: “We will give you money provided you help the Indians to become trained,” or anything of that sort?—Let Mr. Jayaker again, just as I asked Sir Phiroze Sethna a minute or two ago, look to the alternative, the alternative in which restrictions of this kind could be generally imposed. The effect of that might be commercial discrimination of the most extreme form against British Companies.

15,677. How?—In the form of granting subsidies. Take the case that Sir Austen Chamberlain mentioned yesterday: take the case of shipping. The procedure suggested by Mr. Jayaker might be used for destroying the British Shipping Companies altogether.

15,678. It is one discrimination as against another discrimination. Discrimination meets discrimination. The Company discriminates against Indians, the Legislature discriminates against that Company. Discrimination often cures discrimination?—There again I do not agree. I put the discrimination he has mentioned, namely, the insistence upon a particular kind of Board, upon a very different level from the kind of discrimination which is going to destroy the whole of a great shipping industry.

15,679. I do not wish to carry the point any further, but I am taking the case of a Company which discriminates against Indians and which continues to discriminate against Indians. I ask you why should not discrimination of this kind be met by another kind of discrimination by the Legislature in order that that discrimination might be cured? I think Mr. Jayaker has made his point perfectly clear to me at any rate, and we must take it into account. I also have made my point clear, whether they agree with it or whether they do not.

Mr. Hubert Carr.] Might I suggest to the Secretary of State that this question of the employment of Indians really seems more theoretical than practical. I do not know of any concerns out there who are importing English labour at high cost when they have got Indian employees possible on the spot.

Mr. M. R. Jayaker.] I did not take the instance of labour. That was Mr. Joshi's point. I took the point of the refusal to take in Indian Directors.

Sir Hari Singh Gour.] And apprentices.

Sir Austen Chamberlain.

15,680. Secretary of State, in the argument you have been conducting with Mr. Jayaker you have defended the prevention of this discrimination against an existing Company. Am I right in understanding from your answers to me yesterday that any such discrimination would be permissible in regard to a future Company non-existent at the moment when the Subsidy or Bounty Act was passed?—Within the limits of these Clauses, yes.

Mr. M. R. Jayaker.

15,681. One of the last questions I wish to put to you is this, Mr. Secretary of State: Your attention was drawn by Sir Phiroze Sethna to cases of unfair competition. They are rare, but still they are there?—Yes.

15,682. Generally what happens is that a strong Company, strong in its public support, strong in its capital and strong in its Directors, makes it impossible for a new Company—I am not saying necessarily Indian, it may be British and Indian—to come into existence or to prosper. The way they generally do it is by offering very favourable terms and by having rates which cut the throat of the other Company. I can give you a case which I am sure you must be aware of, of a Company which took its passengers free and in addition to that it gave them clothes or a pair of dhoties to wear?—I believe it was an Indian Company.

Mr. M. R. Jayaker.] I will not say whether it was Indian or British, but the Company was there.

Sir Hari Singh Gour.] And handkerchiefs.

Sir Phiroze Sethna.] And packets of sweetmeats.

Mr. M. R. Jayaker.

15,683. I want to know whether you do not think that in a case of this kind

there ought to be some legislation by which the Legislature would bring pressure to bear upon such a Company which made it possible that terms of equality and equal competition may be established between the strong Company and the weak Company which is just struggling into existence, apart from racial questions?—I should have thought that if there are cases of that kind they would be dealt with by local legislation, legislation against trusts and so on. I do not see how they come into this category of cases.

Sir John Wardlaw-Milne.

15,684. I would ask the Secretary of State whether, in giving that answer, he is aware that exactly the same conditions applied in this country in living memory in which not only were fares free between this country and Ireland, but presents were given to people going on board?—It does seem to me very difficult to restrict competition by this kind of Constitution Act.

Mr. M. R. Jayaker.

15,685. The most effective way for the Legislature would be by using some kind of discrimination to prevent this unfair competition. If we are agreed that it is necessary that such unfair competition should be prevented, then the question is how to do it, and the easiest way would be to leave the Legislature freedom in this exceptional case to pass a measure which may look like discrimination. That is what I am suggesting to you, but what discrimination is there to prevent such unfair competition as you have submitted for our consideration?—I think the great safeguard really judging from the experience of most countries in the world is that that kind of rate-cutting competition in the end is uneconomic. Certainly from my own knowledge, I can think of many cases in the last few years in particular in which companies have tried that kind of policy, and within my own knowledge it has time after time failed.

15,686. The company I have in view is very prosperous, Sir Samuel. It has not failed at all?—I was also thinking of an Indian Company. Mr. Jayaker, and if my information is correct, that

kind of policy has not answered and there is now a change taking place.

Archbishop of Canterbury.

15,687. May I ask a question, Secretary of State: Supposing the Legislature brought in some Bill to deal with this kind of abuses which Mr. Javaker has mentioned, it would be open to the Governor-General to decide that they were not discriminations of the kind contemplated in these proposals?—That is so.

Mr. M. R. Jayaker.

15,688. But that does not meet my point because your proposal, Secretary of State, is to make the act automatically invalid. The Governor-General's interference comes under his special responsibilities under paragraph 18. That only applies to non-legislative discrimination. Legislative discrimination, according to your proposals, is declared to be void. The Governor does not come in there, Sir Samuel. The Act itself is void, *ultra vires* the Indian Legislature?—But, surely, the position is this, Mr. Jayaker, that in these clauses we are attempting to deal with commercial discrimination and nothing else. The kind of cases that you have mentioned fall into another category of case and they would have to be dealt with, say, in the way in which the American Federal Government has attempted to deal with rates, trusts, and so on. In the second alternative, as His Grace has just said, the Legislation might well go through as not trenching upon the field of commercial discrimination.

15,689. But that will not depend upon the Governor-General's decision: that is what I am pointing out: it will be a question for the Federal Court to decide. Supposing somebody challenges this legislation as being *ultra vires* the Legislature, the Governor-General will not come in: it will be a question for the Federal Court?—Yes.

15,690. That is what I am pointing out in reply to His Grace's question: That the Governor-General's special responsibility comes in when questions of non-legislative discrimination are concerned: questions of legislative discrimination go to the Court. They do not come to the Governor at all. That

is the position here. Either it is a valid act or a void Act. In either case it must go to the only body competent to decide the question, which is the Federal Court. The Governor does not come in?—Yes.

15,691. Then the last question I want to ask you is with regard to sub-paragraph (viii): "There are, moreover, certain points which are definitely not covered by the general provisions outlined above, e.g., there is no provision safeguarding ships registered in United Kingdom ports. It is also desirable to secure the right of United Kingdom ship-owners to employ in Indian trade officers holding United Kingdom certificates of competency." I follow that principle, but what will be the position of British ships which take part in the coastal trade of India which discriminate against Indian qualifications? Would that be equally prevented? Ships which carry on the coastal trade of India, and therefore which benefit by Indian custom and by Indian support, but which discriminate in the sense that they refuse to employ pilots or officers medical or otherwise, with Indian qualifications: they discriminate against Indian qualifications: how will that case be met? I see you have met the case of discriminating against British qualifications?—But that, surely, is a case of private rather than of Government discrimination. I am not in any way making an argument for companies which do not employ British labour, but it does seem to me very difficult to restrict the right of contract of a company to employ the people it wishes to employ. After all, the safeguard is that it is reciprocal, Mr. Jayaker.

15,692. Yes, I see that; but I see only one part of it is met by your proposal. The other part is not met by the proposal, and I want to know, in such a case, whether the Legislature would have some right?—Take the case of shipping: it would be difficult to say that a shipping company should employ such and such a number of British or Indians: it would be difficult for a British company to be forced into an obligation of that kind. I imagine it would be equally difficult for an Indian company to be forced into it.

Sir John Wardlaw-Milne.

15,693. May I ask the Secretary of State on that, before he finally replies, is not it open under this clause for an Indian-owned shipping company to employ nothing but Indian qualified officers if they chose, just as a British company could?—It is so, and it is with that fact in mind that I just gave the answer to Mr. Jayaker: that our arrangement was a governmental arrangement founded upon reciprocity, and we are not attempting to interfere with the private right of contract either in the case of the British or of the Indians.

Earl Winterton.] Might I venture to bring out another point in connection with this? I venture to suggest that by the proposal Mr. Jayaker makes, the aims that he seeks will not be reached, because if you were to make it a matter of governmental action in the case of these ships the Government might also take action in this country; it might take such action as not to allow *Lascars* to be employed in P. & O. ships. There was very strong pressure of that kind at one time. Up to now it has been resisted by successive British Governments.

Mr. M. R. Jayaker.

15,694. Then the sum total of your proposal, Sir Samuel, is this, very briefly: that the Indian Legislature will have no right to see that certain important key industries, which, by reason of the importance of the manufactured article, or the importance of the times through which they are passing, should be left entirely in the hands of Indian nationals?—I am always rather nervous in answering questions about key industries—

15,695. Vital industries?—because I never know exactly what is in the mind of the questioner. Here we understand by key industries a few industries devoted to producing particular commodities that are necessary for defence; we do not go further than that. I am not quite sure whether Mr. Jayaker means that.

15,696. I am taking the expression from your Key Industries Act, Sir Samuel. You have got an expression in that Act which is on your Statute Book?

—The Key Industries Act is restricted to a very few necessities of war, if I remember it—nothing else.

15,697. It might be optical glass in India; it may be something else; but I take the definition from you: articles which may have an importance owing to the emergency through which the country is passing?—The contingency is war in this case.

15,698. The scheme leaves no power in the hands of the Indian Legislature so as to arrange matters that industries which it regards for the purpose of defence or for self-protection as necessary and vital should be left entirely in the hands of Indians?—Mr. Jayaker, I understand, accepts the definition that we have here of Key Industries, namely, a very restricted definition. I should have thought in that case what is really important is that these particular things that are necessary for Indian defence should be made in the country. That is the whole basis of our Key Industries Act. If they are made in the country it does not seem to me to matter whether they are made by a British Company or an Indian Company. What does matter to India is that these goods should readily be available there and that India is quite certain of having them at the moment of emergency.

Lieut.-Colonel Sir H. Gidney.

15,699. My Lord Chairman, my questions will only refer to paragraph 6 of the Memorandum regarding the professional qualifications, and the Secretary of State said that he would have something to say upon that subject in the course of his evidence?—Yes.

15,700. Would it be appropriate to ask you that now?—Yes, I do not mind, Sir Henry.

15,701. Continuing what Mr Jayaker has referred to, Secretary of State, regarding the discrimination of employment, we will take, for instance, British ships. It is a well-known fact that British shipping refuses to employ any but British labour in certain of its departments, the reason being that they insist upon certain standards of examinations which are obtainable only in England; to quote one case; the Board of Trade. To my mind, it seems that

this places the Indian and those who are trained in India at a distinct disadvantage, especially in those British companies who have a big coastal traffic in India. Would the Secretary of State agree with me that one of the ways of countering this disadvantage is by having examinations equal in India as in England—in other words, following that benevolent act of reciprocity? In that case we would have an examination equivalent to the Board of Trade in India as we have in England, so as to allow British or Indian companies to select their employees as they want?—It is difficult for me to give a general answer dealing with a lot of rather technical features like the qualifications of the professions, but, speaking quite generally, I should be in favour of that line of advance. Sir Henry will remember that it is actually what is happening now with some of the pilots of India. I understand the Hooghly pilots are mainly being trained in India.

15,702. The apprentice pilots are to-day being taken from the "Duffryn," which was never done before, and that is certainly, as the Secretary of State states, a line of advance, but that only touches the fringe of the subject. I am talking about the ships which trade along the coasts of India and Burma. I know that some companies do employ certain statutory Indians and Indian Indians, but it is a hard and fast law that any shipping coming from India to England gets rid of its Indian nationals and re-employs Europeans: in other words, there seems to be a distinct racial discrimination in even the passage of these officers to India?—But would not there be the same discrimination in the Indian lines against British employees?

15,703. I do not think it is there because the few Indian lines that do exist to-day have both British and Indian officers. I think they take the cheapest and the best?—Here again the difficulty is that it is not a Governmental arrangement. This is really a question of private contract.

15,704. I quite agree?—That does not mean that I am in favour of any racial discrimination: I am not; but what I am saying is that it is very difficult to deal

with a situation of that kind by legislation.

15,705. I stress this point to implement what Mr. Jnyaker said. There is the practice of racial discrimination by Shipping Companies in England, and that will be allowed to continue, and India will have no way by which she can force her voice and have that checked and stopped. It will continue *ad infinitum* because, as I say, of this inequality of examination and qualification?—I should like to know more of the detailed facts of the position, both in the British and the Indian lines, before I accepted a very general statement of that kind.

Lieut.-Colonel Sir H. Gidney.] I think it is quite right. Would it be right if I asked the Secretary of State whether I can refer either briefly or in full to some points as regards the medical profession?

Sir Phiroze Sethna.

15,706. That is reserved to a later date, is it not, Secretary of State?—No; I did not make any suggestion one way or the other about the medical question, did I?

Lieut.-Colonel Sir H. Gidney.

15,707. Secretary of State, will we have another opportunity of taking this as a whole? It is no use taking it piecemeal? I do not mind whether we take it now or later.

Sir Austen Chamberlain.

15,708. Did not you ask that we should not now discuss the medical profession because negotiations are going on?—Yes, but I am now ready at the proper time. I do not suggest that this is the proper time to make a statement, but I think, perhaps it might be best if, before I made a statement or answered questions, I should circulate a memorandum; but I am in the hands of the Committee. If they like to go on with the examination now, I am ready.

Lt.-Colonel Sir H. Gidney.] I would rather defer my questions.

Mr. N. M. Joshi.

15,709. May I ask the Secretary of State the exact meaning of the words "British subjects" domiciled in the United Kingdom? What do you mean



by "domiciled in the United Kingdom"—a resident of the United Kingdom?—The lawyers tell me that there is no such thing as United Kingdom citizenship or United Kingdom nationality. You therefore have to make it clear that the British nationals about whom we are talking are British nationals whose domicile is here. That is the reason why the addition of "domicile" is put in.

Mr. N. M. Joshi.] In reply to Mr. Jayaker, you said that there is the difficulty of excluding the Colonials. This right does not apply only to Companies. Paragraph 3 (ii) applies to British subjects domiciled in the United Kingdom. This refers to much more than Companies. My fear is that if you use the words "British subjects domiciled in the United Kingdom" without any definition, the Colonial British subjects will be included.

Marquess of Reading.] Only those domiciled in the United Kingdom.

Earl Winterton.] In view of the fact that, as great exception is taken in the Dominions to the term "Colonial" as is taken in India to the term "Native", could not we refer to these people by their proper name, namely, "Dominion British subjects"? That is the technical term.

Mr. N. M. Joshi.

15,710. What is the exact meaning of "domiciled"? Does it mean born in Great Britain?—Sir Malcolm Hailey is more of a lawyer than I am. He will tell you about domicile. (Sir Malcolm Hailey.) There are various ingredients in the legal composition of "domicile", but I think for the present purpose Mr. Joshi might take it that it means residence, very broadly.

Sir Hari Singh Gour.

15,711. Permanent residence?—Yes.

Mr. Zafrulla Khan.

15,712. The difficulty is, is it not, that it depends upon intention. Therefore, when the question arises it has to be judged whether a person is or is not domiciled in a particular place?—There are so many ingredients in it, but for Mr. Joshi's purpose I thought "resi-

dence" or "permanent residence" would be the best test.

Mr. N. M. Joshi.

15,713. In regard to paragraph 3, sub-paragraph (ii) (b), I want to ask you, Secretary of State, to give me some concrete instances of disabilities based upon, say, duration of residence or language. What sort of disability will be imposed which is based upon duration of residence or language?—(Sir Samuel Hoare.) Supposing, to take a very simple case, there was the intention in India to say that nobody could carry on business who had not an intimate knowledge of the 250 Indian languages or who had not lived there for 50 years.

15,714. I would draw your attention, Secretary of State, to the holding of property and the holding of public office, especially the holding of public office. If the Legislature makes a rule that, in order to be a member of a local district board, a man must be a resident in that district for one year, will that be a disability imposed upon anyone based upon duration of residence?—I should have thought a question of that kind is really a question of franchise. This does not affect electoral qualifications or qualifications for sitting in a public body.

15,715. "Holding a public office"; that is what you say?—Surely what is meant is this, that supposing two people are qualified, the one an Indian and the one a British citizen, living in India, provided their electoral qualification is correct, no distinction should be drawn between them.

15,716. What you really mean is that there should be no discrimination, but the paragraph, as it is worded, means that you will give protection against disabilities based upon duration of residence?—(Sir Malcolm Hailey.) Which paragraph?

15,717. 3 (ii) (b)?—That is not only referring to the holding of office; it refers also to other disabilities.

15,718. It refers to "a special form of protection for British subjects domiciled in the United Kingdom, in respect of the following matters (in British India): Taxation, travel and residence, the holding of property, the holding of public

office, the carrying on of any trade or business." My position is this, that, in certain matters, it will be justifiable to lay down certain conditions as regards duration of residence and even of language. If no disability can be imposed on these two grounds a certain amount of justifiable legislation will be prevented. (Sir Samuel Hoare.) Mr. Joshi, there is no intention under this paragraph of preventing a local body having its own qualifications for voting or for being a member. That must be really a question of franchise.

Mr. N. M. Joshi.] May I therefore suggest a change in the wording? You say: "against statutory disabilities based upon domicile." What you really mean is: "In the matter of domicile; in the matter of duration of residence"; that is, there is to be no discrimination, and one period laid down for Europeans and another period laid down for Indians. That is your meaning?

Mr. Zafrulla Khan.] There is no question of any period for an Indian. An Indian who was born there would be presumed to have an Indian domicile. He does not need to acquire an Indian domicile by residence in addition to having been born there.

Mr. N. M. Joshi.

15,719. Is the condition of residence in a particular district or Province an unjustifiable one?—If it is a matter of drafting I will look into it. Our intention, I think, is clear, and we do not want to go further than our intention.

Mr. N. M. Joshi.] I wanted to ask you a question which I have raised formerly in examining one of the witnesses. In India by a rule of the Foreign Department, Indians cannot be appointed to certain posts. The posts which I had in mind at that time were posts of those people who decipher Government codes.

Sir Hari Singh Gour.] The Cypher Bureau.

Mr. N. M. Joshi.

15,720. That has been done by a rule of the Foreign Department. The Foreign Department has the power, perhaps, under certain legislation, to

make such rules. This rule discriminates against Indians in favour of British subjects. I want to know whether the constitution which you are providing will prevent such kind of discrimination not against Britishers but against Indians. I am speaking of the Cypher Bureau in India. My question is that there is definite discrimination against Indians by rule in India?—Let me say at once that I do not know about these rules at all. I do not know whether there is such a rule or is not. In any case it would be an administrative arrangement within the Department.

Mr. M. R. Jayaker.

15,721. With all this talk of equality there are occasions when a country desires, on a very ticklish question, that certain parts of the administration or of industry should be in the hands of its own nationals. That is the point I am putting to Sir Samuel?—It is the point which Mr. Jayaker was putting to me, but another point that is worth remembering is that the point which Mr. Joshi has raised now does not really come into this provision at all, because here we are dealing with statutory disability. There is no question of statutory disabilities here.

Mr. N. M. Joshi.

15,722. Disabilities which are imposed by statute or regulations made under a power given by statute. I am coming to that point now; I shall tell you how. In paragraph 3, sub-paragraph (vii) (c), you are giving power to the Governors and the Governor-General to discriminate when there is a grave menace to the maintenance of peace and tranquillity. Under that clause a Governor-General may make a rule that to certain posts Indians shall not be appointed, but that only British-born subjects shall be appointed, so this would be a statutory disability?—It might equally be the other way round.

15,723. It may be the other way round; it is quite possible; but you are giving powers to the Governor-General to discriminate not merely against any community but even in favour of certain communities, and perhaps of the point which I have raised

about the Foreign Department rule may be brought in under this clause. In spite of your constitution, the Governor-General may say that in employing Indians in the Foreign and Political Department there will be a grave menace to the peace and tranquillity, and, therefore, certain posts in the Foreign and Political Department cannot be held by Indians?—In any case, I do not see how you can deal with it by statute. Anyhow, we do not propose to deal with it by statute. Things, of this kind must be a matter of office administration.

*Mr. Zafrulla Khan.*

15,724. If a provision of that kind were made by administrative rules, you would have no objection to that?—I cannot give an answer Yes or No to a question like that, because it must depend upon the case itself.

15,725. Supposing the Federal Government made it a rule that certain posts for certain reasons of secrecy or reasons of a political kind, should be held only by Indian-born Indians and that nobody should be recruited to those posts, would that be a kind of thing which you would think was discrimination and should not be permitted, or would you think that was the kind of thing which was done in the Foreign Department for certain reasons, and therefore should be permitted to the Federal Government, too?—I should say the case must be judged on its merits.

15,726. Would not the general provision rule it out altogether? Where is the discretion left to any authority, the Federal Government or the Governor-General, or anybody, to say that in certain cases and for certain reasons an exception may be made?—Surely a discretion must always reside in the head of any Department to say how his office shall be run. You do not deal with that by statute, either here or anywhere else. If it were found that the Minister or the head of a Department was making discrimination in the administration of his Department, then the case would come within the field of the Governor-General's special responsibilities, and he would have to decide.

15,727. I am afraid there is some confusion between the two kinds. Supposing a Minister, in passing his orders or making any appointments which may be in his gift, actually makes discrimination, no doubt the Governor-General would intervene and say: "You are discriminating and it is my special responsibility to see that that is not done," and he can intervene?—Yes.

15,728. What I am saying is would it be possible to have rules permitting discrimination for certain good and valid reasons, and would not this rule be automatically involved under the provisions you are putting in your Memorandum; whereas, on the other side, there is the discretion that where discrimination may be desirable it would be permissible either with or without the permission of the Governor-General? Would not the effect of the provisions you want to put into the Constitution Act be that such things are automatically involved, even if the Governor-General has agreed that they are valid and there are good reasons for them?—I will look into the position again with my advisers, but my own view is very definitely that you cannot deal with matters of this kind by Statute.

15,729. True; therefore, all we are pressing for is that your Statute should be so framed that this kind of discrimination that may be desirable should not be ruled out automatically by your Statute?—I see. I will take note of this point, and I will look into it again with my advisers.

*Sir Austen Chamberlain.*

15,730. Secretary of State, could it, in your opinion, be held that the exclusion of a particular class from a particular office on the ground of the security of the State was discrimination within the meaning of your Paper?—No; it could not.

*Sir Austen Chamberlain.]* As I understand the questions, they relate to some occasions in which the security of the country is involved, and, in that case, I should have thought that the necessary course could not be held to be discrimination.

Mr. N. M. Joshi.

15,731. We were not dealing with individuals. We are dealing with classes. Sir An-ten's point, which I accept, is covered by sub-clause (vii) (c).

15,732. I want to know exactly what is the kind of scope of discriminatory legislation which the Governors and the Governor-General will pass, what kind of legislation do you envisage where the Governors and Governor-General will have the power to discriminate between various classes of British subjects?—I do not think we contemplate any legislation of that kind.

15,733. Then why do you give power to Governors and the Governor-General to discriminate between various classes of His Majesty's subjects?—The object of this is to deal with quite exceptional cases, Police cases, and so on.

15,734. I wanted to ask you one question about shipping. You are providing that there will be no Indian legislation insisting upon the employment of any people belonging to any race. You may be perhaps aware that Indian crews are not allowed under some kind of rule or regulation of the Board of the Trade here to be employed beyond a certain degree of latitude. I want to know whether that kind of discrimination against Indian crews will be prohibited under the kind of provisions which you are making?—The particular case that Mr. Joshi mentioned, I think, deals with Lascars, and it is a regulation made in the interests of the health of the Lascars.

15,735 Secretary of State, your advisers tell you that it is a regulation made in the interests of the health of the Lascars, but I have knowledge that neither the shipping companies in India, nor the Lascars in India want that regulation. On the contrary they have been agitating for some years to see that that regulation is terminated. It does not serve any useful purpose because, if Indians are not employed Malays and Chinese are employed in their place?—It is very difficult to go into a detailed case of this kind. I would have said that it does not come within the question of discrimination at all. This was simply, rightly or wrongly, a health regulation

15,736. You are providing that there shall be no legislation passed discriminating, and, if there is any discrimination, it will be reciprocal. The Indian Legislature cannot pass any regulation saying that British sailors should not be employed in the Indian coastal traffic. Similarly if Indian Lascars also desire that there should be no restriction on their employment, why should not such restriction be prohibited?—Mr. Joshi really is raising a case that I do not think comes into these categories of discrimination cases at all. I am informed, and I will confirm my information, that it is a provision, first of all, in the interests of health. We have no intention whatever of making it impossible that either the British Government or the Indian Government should issue health regulations, and, secondly, it is a case of private contract in which this condition, I am told, appears in the papers that are signed.

15,737. My information is that it is not private contract; it is a regulation of the Board of Trade here?—They are under the Indian Articles of Agreement. I should have used that phrase rather than the phrase "private contract."

15,738 They are based upon the statute, the Indian Marine Shipping Act. I do not wish to raise the particular question I want to raise the Constitutional question, whether any discrimination can be imposed against Indians. That was the point I want to ask you now one question about these restrictions against British subjects following certain prohibitions. The point which I want to put to you is this, that by putting down safeguards for the benefit of a few individuals as, for instance, Indians who will go to India as barristers, you are overloading the Constitution with safeguard. On that point I want to draw your attention to this fact, that there are many Indians who come to England and acquire those qualifications. My suggestion to you is thus, that this very fact is a great safeguard, that there will be no legislation in India prohibiting them from following those professions, and if that is a safeguard why should you overload the Constitution with more safeguards to facilitate the British subjects following some of the

professions in India ?—The reciprocity is certainly a safeguard. I fully admit that fact, but you do want this insurance against the misuse of powers in the future. I hope they will not be misused.

Mr. M. R. Jayaker.

15,739. I thought you were not asking for any safeguard in your Memorandum against professional qualifications ?—We are not. Mr. Jayaker is quite right.

Mr. N. M. Joshi.

15,740. In your paragraph 6, sub-paragraph (ii) you say : "preferably that the Constitution should provide that no law or regulations made in India for the purpose of prescribing the qualifications for any given profession shall have the effect of disabling from practice in India on the strength of his British qualification any holder of a British qualification" ?—(Sir Malcolm Hailey.) We say it has been proposed. There is no conclusion put forward in this Memorandum.

Mr. Zafarulla Khan.] The Secretary of State has not supported you.

Mr. N. M. Joshi.] I am not suggesting that you have adopted it. I wanted to ask you whether the adoption is not really necessary at all, because there are many Indians who have acquired those qualifications, and the fact that Indians would like to follow those professions in India is a safeguard in itself.

Dr. B. R. Ambedkar.

15,741. Just one question, Secretary of State, dealing with the exceptions in (e), "Special Powers", as I understand, the position is this : Generally speaking, the Legislature cannot pass a discriminatory Act. I am speaking quite generally. ?—Yes.

15,742. Administratively the Government of the day cannot discriminate unless it satisfies the Governor that there is no discrimination in fact ?—No.

Mr. M. R. Jayaker.] The Governor-General.

Dr. B. R. Ambedkar.

15,743. The Governor-General or the Governor, because the proviso refers to both. That is theoretically and generally the position, is it not ?—Yes.

15,744. Now under sub-clause (c) the Governor-General will have the power to

pass a legislative enactment making a discrimination if it came within the terms of this proviso. I mean, this power you give to the Governor not only for administrative purposes, but also for legislative purposes ?—It is the general power under Proposal 18 of the White Paper.

15,745. Governing both ; so that the Governor may discriminate although the Government may not ?—For the prevention of any grave menace to peace and tranquillity.

15,746. Yes. Now I want to ask what is the import of this. I will put one or two specific illustrations to see if that is what you mean. I suppose under this clause it would be possible for the Governor-General, by way of prevention of any grave menace, to say that certain persons shall not be employed in the Army. Would it be open to the Governor to do so under this ?—I suppose theoretically it would be, but the case would be very remote in connection with a grave menace to peace and tranquillity. I cannot, for instance, imagine putting the concrete case which is perhaps in Dr. Ambedkar's mind, a Governor-General saying that a proposal to start a unit endangered the peace and tranquillity of India.

15,747. I am glad to hear that. That is what rather disturbed me ?—I am not saying whether from a military point of view it would be a good or a bad plan but I cannot see that this would come within the scope of this safeguard.

15,748. Nor would it come within the special powers of the Governor in this clause to say that the Depressed Classes shall not be employed in the Police ?—No.

Mr. M. R. Jayaker.

15,749. I suppose it is quite clear from what you say in paragraph (vii) sub-paragraph (c) that this power of passing discriminating laws which the Governor-General employs will not be extended to Clauses (b), (c), (d), (e) and (f) of his special responsibilities under Proposal 18. It is only confined to Clause (a). Have I made my point clear ?—Certainly.

15,750. It is not extended ?—It is only confined to (a) here. Off-hand, I cannot contemplate the type of legislation that.

might be necessary. I have not got anything in mind. I would have said you would have to take the power both for legislation and administration. I cannot conceive off-hand of the kind of legislation that might even be remotely needed.

*Sir Hubert Carr.*

15,751. Secretary of State, I would like to get clear in my mind one or two points with reference to paragraph 3 of your Memorandum. It is proposed that the Constitution Act. should contain a general declaration, etc. That will not be so narrow as not to embody the general protection given in Proposal 122, will it? Proposal 122 gives protection against discrimination and enables generally civil rights to be held, but paragraph 3 seems to be much narrower—the general declaration which you have mentioned in paragraph 3?—Sir Hubert Carr must read the whole of the Memorandum together. I think then he will find that, instead of Clause 122 we have something more specifically defined in our Memorandum, namely, paragraph 3 (i), and then, instead of 123, again, we make our intentions more precise. We have done that for this reason, that as long as our intentions were in the general form in which they are in paragraphs 122 and 123, Indians were very suspicious of them because they felt that we were indefinitely restricting the power of the Indian Government, but I understood that also British traders were suspicious of them, because they felt that they were not precise enough. The main object of our amended proposals is to meet those two anxieties, namely, by making our proposals more precise, to remove these suspicions both in India and amongst the trading community here.

*Sir Hubert Carr.*] Thank you. That was what I wanted to get clear. It is only making it more precise. It is not narrowing it in any way.

*Mr. Zafulla Khan.*

15,752. I do not know whether Sir Hubert put a question to the Secretary of State or made a comment, or if he did make a comment, whether it was accepted by the Secretary of State. Sir Hubert Carr said: "I am glad to learn it is not for the sake of procedure and

does not narrow the scope of Proposal 122." It definitely narrows the scope of Proposal 122?—It narrows the form, but let me put it in the form of a concrete case, and Sir Hubert will see how necessary this narrowing was. A man who becomes a bankrupt should cease to be the director of a company: that is the kind of case. It was necessary, therefore, to restrict the provisions in such a way as to avoid preventing the Indian Government taking action. That I think we should all agree was quite necessary.

*Sir Austen Chamberlain.*

15,753. I understand, Secretary of State, you have not changed your purpose, but you thought your original words were not apt for the purpose?—Certainly, the purpose remains just the same.

*Mr. M. R. Jayaker.*

15,754. But in certain matters it does go beyond Proposals 122 to 124. For instance, in that much disputed clause (iv), the *ipso facto* clause, I find there is no provision between Proposals 122 and 124 which has the same effect as this proposed clause will have?—It is assumed to be in Proposal 122.

15,755. It is assumed, I say, but it is not clear whether Proposals 122 to 124 go the length of saying what you say in the proposed clause (iv)?—No, it is just a case of that kind that shows the necessity of being more precise.

*Sir Hubert Carr.*

15,756. Then the commercial discrimination, which is a special responsibility of the Viceroy, will include such items as are set forth in your paragraphs 3 (i) and (ii)?—Yes.

15,757. The next point I wish to ask you about is with reference to language. I fully recognise that the English language alone will not be sufficient to qualify anyone domiciled in the United Kingdom for all posts in India, but is it intended that, English, as the official language of the Federation, shall be sufficient, and that any other language that may be required for a certain post shall be recommended by the Governor-General; any legislation allowing for an extra language shall be with the prior consent of the Governor-General?—

By Clause 3 (b) we mean a man's natural language. We cannot discriminate between him and another man on the ground of his own language. When it comes to a question of changing the official language—is that Sir Hubert Carr's point?

Sir Hubert Carr.] May I illustrate it by what is in my mind: Supposing there is a post in Madras: a man with knowledge of the English language applies for it, and the Government passes legislation to the effect that nobody who does not know Telugu and Tamil, in addition to English, shall be eligible for that post. My suggestion is that such legislation should be with the prior assent of the Governor-General, so that it may avoid any easy method of discrimination.

Dr. Shafa'at Ahmad Khan.] He must have a knowledge of English in any case.

Sir Hubert Carr.

15,758. Yes; that is the official language?—Sir Hubert Carr will see that it is a difficult question to deal with by legislation; he would, I think, agree with me that a knowledge of certain Indian languages would be necessary in certain cases. I think we are all agreed about that.

15,759. Absolutely?—That being so, I should have thought the wisest way to deal with it was to deal with it in the general category of discriminatory cases. Take the case upon its merits with the Governor-General's power and the Governor's power to intervene in a case of definite discrimination. I think it is very difficult to deal with a case of that kind other than on its merits.

Mr. Zafrulla Khan.] Surely in the case that Sir Hubert put it could not be said that it was discriminatory. That would keep you out and keep me out, and it would necessitate if you and I wanted to apply for that post that we must learn Telugu. Where is the discrimination?

Mr. M. R. Jayaker.

15,760. It is discrimination against the whole of India except Madras?—Does not that all go to show that you had better deal with cases of that kind on their merits?

Sir Hubert Carr.

15,761. I quite agree; but in answer to Mr. Zafrulla Khan, that is exactly the kind of legislation which I gather is referred to in Clause 3 (vi). It might be discriminatory although not on the face of it discriminatory?—Paragraph (vi) deals with legislation. A case of this kind I think almost inevitably will be administrative.

Dr. B. R. Ambedkar.] Take, for instance, the case of a school teacher appointed in a training school to train teachers who are to teach in vernacular schools; such a man must know the vernacular in order that he may be in a position to train the teachers who come there.

Sir Hari Singh Gour.] And also in the case of an interpreter; he cannot be an interpreter unless he knows the language.

Sir Hubert Carr.

15,762. In putting the question I fully realised the difficulties, and that is why I asked whether it was intended that the Governor-General should give his prior assent rather than try to make a statutory rule which I think would be impossible?—I do not think you can deal by prior assent, Sir Hubert. I think in nine hundred and ninety-nine cases out of a thousand it will not be a case of legislation at all; in fact, I am not sure that in a thousand cases it will not be administration. That being so, I think you must depend upon the case being dealt with on its merits by the Governor-General and the Governor under their special responsibilities.

Sir Hari Singh Gour.

15,763. But are they not special cases of discrimination?—I think they are, I think they always should be; but supposing miscreptious people used them as a lever for making political discrimination, then it would be a case for the Governor to intervene.

Dr. Shafa'at Ahmad Khan.

15,764. These cases are purely administrative acts, and you cannot expect the Governor-General to intervene in these matters.

*Sir Hubert Carr.*

15,765. The next point I wished to ask was, when an aggrieved party, Indian or English, goes to the Governor-General, it was suggested by the Associated Chambers of Commerce that that aggrieved party should have the right to demand an Inquiry, and the evidence rather went, if I may remind you, to the effect that perhaps it was not wise to allow them to demand an Inquiry. But would the proposals envisage some reference to the possibility of an Inquiry being ordered as I would suggest, that if, as we hope, matters run smoothly, and perhaps for two or three years there will be no cases brought to the notice of the Governor-General, then when a complaint is made unless some reference to his power to direct an Inquiry is made in the Act such a method of procedure might be overlooked?—I am not myself very much attracted by the idea of putting the possibility of an Inquiry into the Constitution Act. The Governor-General is free to have an Inquiry when he thinks fit: his hands are untied, and I would have thought myself from the point of view of British traders they would be unwise to insist upon one particular kind of Inquiry. The mere fact of mentioning it in the Constitution Act might make it appear to be the normal course to be taken, and I should have thought that from their point of view the normal course had much better be something of a more expeditious character. When you talk about an Inquiry in an Act of Parliament it means rather a formidable affair: a number of people are appointed, taking weeks, it may be months, to come to a decision and so so. I should have thought myself (I do not want to dogmatise upon a point of this kind) that elasticity and freedom in the hands of the Governor-General were really the better course.

15,766. My point in asking the Secretary of State whether he would consider that is because the complaint, for instance, might be against a Minister, and it is obvious that no inquiry could be brought about except by appointing probably a High Court Judge or somebody of that kind in an independent position, and it is just to indicate the possibility of an Inquiry. Otherwise

one is a little inclined to fear that after two or three years of plain sailing and a complaint is made, the Governor would very naturally ask his Minister if there was any reason for the complaint, and if he told him 'No' he might be satisfied?—We can certainly take the point into account. As I say, I am not much attracted by it, but we can discuss it later on.

*Mr. M. R. Jayaker.*] I want to ask Sir Hubert Carr in the interests of the British trader which he thinks is better: that the Governor should decide this question after making a secret investigation or that there should be an open public Inquiry where evidence should be given on both sides, and agitation will grow up on both sides?

*Sir Hubert Carr.*

15,767. In answer to that, I would say the class of Inquiry I had in mind was the Governor appointing one man in whom he had confidence to go and investigate the cause of the complaint, which might be three or four hundred miles away from the Governor's seat?—He can do that. I would say that would be a much more expeditious way than having something in the nature of a Royal Commission or even a Joint Select Committee.

15,768. Now may I refer to the position of Dominion subjects in India. As I understand it, India will have the right to make agreements with the Dominions with reference to the entry of their subjects but I am referring to those Dominion subjects who are already in India holding positions. I imagine that those men when they go on leave, for instance, will have the right of re-entry irrespective of any arrangements which may be made between India and the Dominion thereafter?—I think in cases of that kind there must be an agreement. I have made enquiries, and what I understand happens in Australia is that the return of people from leave is not regarded as a new entry. They have a system of passes that admit of that, and I imagine that that is what would happen in the Indian case as well.

15,769. Then there is no reference in the Memorandum to the question of confiscation which is referred to in para-



graph 75 of the Introduction. I take it that that will be a special Part of the Act, but it does not come under this proposal?—We have always assumed that somewhere in the Act there should be a Clause prohibiting confiscation, expropriation, and also dealing with compensation.

*Dr. Shafa'at Ahmad Khan.*

15,770. That will be in the Act?—I think so, probably.

*Sir Hari Singh Gour.*] One of the fundamental rights, perhaps.

*Dr. Shafa'at Ahmad Khan.*] Yes.

*Sir Hubert Carr.*

15,771. Then may I refer to a question which I was allowed to ask as a supplementary question yesterday regarding the position of the professions. The British community in India do feel that this is really a very important matter, and while recognising the difficulties which you pointed out yesterday, I would suggest that it might be possible to arrange that qualifications received in England for the identical purposes for which future Indian Legislatures might demand qualifications should carry in India?—*Sir Hubert* means, does he not, that the basic qualifications should be accepted on both sides?

15,772. On both sides, yes?—Yes. Then that there should be a latitude for imposing reasonable local conditions over and above that?

15,773. Yes. We feel that there could be no objection to that. It must be necessary that there may be certain overriding qualifications required by Indian Legislatures, but what the British community particularly wish to avoid is that having gained qualifications for a specific object here, when they go to India to practise, to put into action that object, they should not have occasion to qualify under Indian rules?—That would appear to me to be a very reasonable request. The difficulty is to put it into a precise form without unduly tying the hands either of the British Government or of the Indian Government. *Sir Hubert* has been kind enough to give me a form of words. I will look into that form of words. Off-hand, I do not think

it quite meets his point, but I think it is the general desire of everyone that it should not be necessary either for an Indian coming to Great Britain or an Englishman going to India to have to do all his basic examinations over again, taking an extreme case, but that there should be this latitude for local conditions.

*Mr. M. R. Jayaker.*

15,774. I hope the Secretary of State will make it clear at some stage that he does not regard conditions like that as discrimination. Take, for instance, the case in this country; you make it necessary that any person who comes to practise here as a medical man should know English. That would not be regarded in India as a discrimination because it is a necessary condition which makes for his living here. Therefore I do hope the Secretary of State will make it clear that when he uses the word "discrimination" he has not in view conditions of this character. For instance, a police officer should know Mahratta if he is working in the Mahratta country, or the language of that district?—Yes; I agree with *Mr. Jayaker* that somehow or other we have to make a distinction between discrimination and necessary qualifications.

*Sir Hubert Carr.*

15,775. There are many points of very deep interest, of course, to the British community in India in connection with this question, but from Section 29 of the White Paper I understand that it is the intention of Government to lay down in the Act that British subjects trading in India shall in no case be in a less favourable position than Indians. That is the principle for which we strive, and I should like to know whether it is accepted in the White Paper?—The principle of paragraph 29 of the Introduction?

15,776. Yes?—That is certainly so, and our proposals are based upon this theory and practice of reciprocity.

*Sir Hubert Carr.*] That is all I have to ask, my Lord Chairman.

*Chairman.*] Thank you very much. Secretary of State: that concludes your evidence.

(The Witnesses are directed to withdraw.)

